



Montana Legislative History

Chapter: 451 Session L: 1985 **Checklist of Bill History**

Bill Number: 200 House History and Final Status Sheet

Introduced Bill

Fiscal Note ☐

Third Reading Bill ☐

Final Version of Bill ☐

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 1/23/85	Hearing Date(s): 3/15/85
Committee Report: 1/24/85	Committee Report: 3/19/85

Conference Committee

Hearing Date(s):N/A

Conference Committee Report:

Compiler Notes

Compiled by: S.K. Marshall

Date: 1/3/2024

Notes:

HOUSE FINAL STATUS

HB 198 INTRODUCED BY RAMIREZ, B. BROWN, M. WILLIAMS, ET AL.
ALLOWING NO INCREASE IN TAXABLE VALUE IN CLASS 3 OR
4 FROM REAPPRAISAL
BY REQUEST OF REVENUE OVERSIGHT COMMITTEE

1/16	INTRODUCED		
1/16	REFERRED TO TAXATION		
1/17	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
3/25	HEARING		
3/28	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/30	2ND READING PASS	92	2
4/01	3RD READING PASS	96	4
	TRANSMITTED TO SENATE		
4/03	REFERRED TO TAXATION		
4/12	HEARING		
4/22	FISCAL NOTE REQUESTED		
4/22	FISCAL NOTE RECEIVED		
4/22	COMM REPORT-BILL CONCURRED AS AMENDED		
4/25	2ND READING CONCURRED AS AMENDED	50	0
4/25	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/25	ON MOTION RULES SUSPENDED TO ALLOW SENATE AMENDMENTS		
4/25	2ND READING AMENDMENTS CONCURRED	99	1
4/25	3RD READING AMENDMENTS CONCURRED	97	1
5/01	SIGNED BY SPEAKER		
5/01	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 739 EFFECTIVE DATE: 10/01/85		

HB 199 INTRODUCED BY RAMIREZ, CRIPPEN, ET AL.
APPROPRIATE COAL SEVERANCE TAX TRUST MONEY FOR
UNIVERSITY BUILDINGS

1/16	INTRODUCED
1/16	REFERRED TO APPROPRIATIONS
3/12	HEARING
	DIED IN COMMITTEE

HB 200 INTRODUCED BY WALDRON
EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON
OVERCROWDING
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/16	INTRODUCED		
1/16	REFERRED TO JUDICIARY		
1/23	HEARING		
1/24	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/01	2ND READING PASS AS AMENDED	65	34
2/04	3RD READING PASS	65	35
	TRANSMITTED TO SENATE		
2/07	REFERRED TO JUDICIARY		
3/15	HEARING		

HOUSE FINAL STATUS

3/19 COMM REPORT-BILL CONCURRED AS AMENDED
 3/22 2ND READING CONCURRED 47 1
 3/25 3RD READING CONCURRED 48 1

RETURNED TO HOUSE WITH AMENDMENTS
 4/02 2ND READING AMENDMENTS CONCURRED 79 9
 4/03 3RD READING AMENDMENTS CONCURRED 78 19
 4/08 SIGNED BY SPEAKER
 4/08 SIGNED BY PRESIDENT

4/09 TRANSMITTED TO GOVERNOR
 4/12 SIGNED BY GOVERNOR
 CHAPTER NUMBER 451 EFFECTIVE DATE: 4/12/85
 SECTION 1 CONTINGENT UPON EXECUTIVE ORDER

HB 201 INTRODUCED BY RAMIREZ, CRIPPEN, SIMON, REHBERG
 ENLARGE POPULATION BASE FOR BEER AND ALL-BEVERAGES
 LICENSES

1/16 INTRODUCED
 1/16 REFERRED TO BUSINESS & LABOR
 1/17 FISCAL NOTE REQUESTED
 1/23 HEARING
 1/23 FISCAL NOTE RECEIVED
 DIED IN COMMITTEE

HB 202 INTRODUCED BY WALDRON
 REMOVING LIMITATION ON MENTAL HEALTH CENTER FUNDING
 BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/16 INTRODUCED
 1/16 REFERRED TO HUMAN SERVICES & AGING
 1/17 FISCAL NOTE REQUESTED
 1/21 HEARING
 1/22 COMMITTEE REPORT-BILL DO PASS
 1/23 FISCAL NOTE RECEIVED
 1/25 2ND READING PASS 94 0
 1/26 3RD READING PASS 87 0

TRANSMITTED TO SENATE
 1/28 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
 2/08 HEARING
 3/07 COMMITTEE REPORT-BILL CONCURRED
 3/09 2ND READING CONCURRED 48 0
 3/12 3RD READING CONCURRED 49 1

RETURNED TO HOUSE
 3/15 SIGNED BY SPEAKER
 3/15 SIGNED BY PRESIDENT
 3/18 TRANSMITTED TO GOVERNOR
 3/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 124 EFFECTIVE DATE: 7/01/85

HB 203 INTRODUCED BY BARDANOUVE
 APPROPRIATIONS IN LIEU OF BUDGET AMENDMENT - FISCAL
 YEAR ENDING 6/30/85
 BY REQUEST OF OFFICE OF BUDGET AND PROGRAM
 PLANNING

HOUSE BILL NO. 200

INTRODUCED BY WALDRON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE HOUSE

January 16, 1985	Introduced and referred to Committee on Judiciary.
January 24, 1985	Committee recommend bill do pass as amended. Report adopted.
January 25, 1985	Bill printed and placed on members' desks.
January 26, 1985	Second reading, pass consideration.
January 29, 1985	On motion, consideration passed until 22nd Legislative Day.
February 1, 1985	Second reading, do pass as amended.
February 2, 1985	Correctly engrossed.
February 4, 1985	Third reading, passed. Ayes, 65; Noes, 35.
	Transmitted to Senate.

IN THE SENATE

February 7, 1985	Introduced and referred to Committee on Judiciary.
March 19, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1985	Second reading, concurred in.

March 25, 1985

Third reading, concurred in.
Ayes, 48; Noes, 1.

Returned to House with
amendments.

IN THE HOUSE

March 26, 1985

Received from Senate.

April 2, 1985

Second reading, amendments
concurred in.

April 3, 1985

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 200
2 INTRODUCED BY W. Nelson
3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 2,
6 CHAPTER 235, LAWS OF 1983, TO EXTEND UNTIL JULY 1, 1987, THE
7 EARLY PAROLE PROVISIONS OF SECTION 46-23-201, MCA, TO
8 RELIEVE PRISON OVERCROWDING; AND PROVIDING AN EFFECTIVE
9 DATE."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 2, Chapter 235, Laws of 1983, is
13 amended to read:
14 "Section 2. Termination date. The provisions enacted
15 in (3) and (4) of section 1 of this act terminate on July 1,
16 1985 1987."
17 NEW SECTION. Section 2. Effective date. This act is
18 effective July 1, 1985.

-End-

INTRODUCED BILL
HB 200

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 200

INTRODUCED BY WALDRON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 2,
CHAPTER 235, LAWS OF 1983, TO EXTEND UNTIL 30 DAYS AFTER
COMPLETION OF THE MONTANA STATE PRISON ADDITION OR JULY 1,
1987, WHICHEVER IS EARLIER, THE EARLY PAROLE PROVISIONS OF
SECTION 46-23-201, MCA, TO RELIEVE PRISON OVERCROWDING; AND
PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2, Chapter 235, Laws of 1983, is
amended to read:

"Section 2. Termination date. The provisions enacted
in (3) and (4) of section 1 of this act terminate on 30 DAYS
AFTER THE PRISON HOUSING UNITS FUNDED IN HB 833 OF THE 48TH
LEGISLATURE ARE OCCUPIED, BUT IN NO EVENT SHALL THAT DATE
EXTEND BEYOND July 1, 1985 1987."

NEW SECTION. Section 2. Effective date. This act is
effective July 1, 1985.

-End-

HOUSE BILL NO. 200

INTRODUCED BY WALDRON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 2, CHAPTER 235, LAWS OF 1983, TO EXTEND UNTIL 30 DAYS AFTER COMPLETION OCCUPATION OF THE MONTANA STATE PRISON ADDITION OR JULY--17--1987, WHICHEVER--IS--EARLIER, THE EARLY PAROLE PROVISIONS ~~OF SECTION 46-23-201, MCA,~~ USED TO RELIEVE PRISON OVERCROWDING; CHANGING, AS OF 30 DAYS AFTER COMPLETION OF THE MONTANA STATE PRISON ADDITION, THE POPULATION FIGURES THAT WILL BE APPLIED IN THE EARLY PAROLE PROVISIONS; AMENDING SECTION 46-23-201, MCA; REPEALING, AS OF 30 DAYS AFTER COMPLETION OF THE MONTANA STATE PRISON ADDITION, SECTION 2, CHAPTER 235, LAWS OF 1983; AND PROVIDING AN EFFECTIVE DATE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2, Chapter 235, Laws of 1983, is amended to read:

"Section 2. Termination date. The provisions enacted in (3) and (4) of section 1 of this act terminate on 30 DAYS AFTER THE PRISON HOUSING UNITS FUNDED IN HB 833 OF THE 48TH LEGISLATURE ARE OCCUPIED, ~~---BUT IN NO EVENT SHALL THAT DATE EXTEND BEYOND July-17-1985 1987."~~

~~NEW SECTION:--Section-2.--Effective-date--This-act--is~~~~effective-July-17-1985-~~SECTION 2. SECTION 46-23-201, MCA, IS AMENDED TO READ:

"46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best

1 interests of society and not as an award of clemency or a
2 reduction of sentence or pardon. A prisoner shall be placed
3 on parole only when the board believes that he is able and
4 willing to fulfill the obligations of a law-abiding citizen.

5 (3) If the department of institutions certifies to the
6 board that the population at the Montana state prison
7 exceeds its design capacity of 545 744 by 215 96 inmates or
8 that the population at the women's correction center exceeds
9 its design capacity of 35 inmates and that the prison or the
10 center has exceeded its capacity for a period of more than
11 30 days, the board shall consider convicts in the
12 institution in which the design capacity has been exceeded
13 eligible for parole 120 days prior to the eligibility date
14 provided for in subsection (1).

15 (4) Regardless of length of sentence, if the
16 conditions of parole eligibility are met within the initial
17 12 months of incarceration at Montana state prison, the
18 provisions of subsection (3) do not apply. (Subsections (3)
19 and (4) terminate July 1, 1985--sec. 2, Ch. 235, L. 1983.)"

20 NEW SECTION. SECTION 3. REPEALER. SECTION 2, CHAPTER
21 235, LAWS OF 1983, IS REPEALED.

22 NEW SECTION. SECTION 4. EFFECTIVE DATES. (1) SECTION
23 1 IS EFFECTIVE ON PASSAGE AND APPROVAL.

24 (2) SECTIONS 2 AND 3 ARE EFFECTIVE 30 DAYS AFTER THE
25 GOVERNOR DECLARES BY EXECUTIVE ORDER THAT THE PRISON HOUSING

1 UNITS FUNDED IN HB 833 OF THE 48TH LEGISLATURE ARE OCCUPIED.

-End-

STANDING COMMITTEE REPORT

SENATE

March 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 200

third reading copy (blue)
color

(Senator Crippen)

EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON OVERCROWDING

Respectfully report as follows: That HOUSE BILL No. 200

be amended as follows:

1. Title, lines 5 and 6.
Following: "TO" on line 5
Strike: remainder of line 5 through "TO" on line 6
2. Title, lines 13 and 14.
Following: "REPEALING" on line 13
Strike: remainder of line 13 through line 14
3. Page 1, lines 19 through 25.
Strike: section 1 in its entirety
Renumber: subsequent sections
4. Page 3, line 23.
Following: line 22
Strike: "1 IS"
Insert: "2 and this section are"
5. Page 3, line 24.
Following: "(2)"
Strike: "SECTIONS 2 AND 3 ARE"
Insert: "Section 1 is"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

HOUSE BILL NO. 200

INTRODUCED BY WALDRON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND--SECTION--2,
CHAPTER--235,--LAWS--OF--1983,--TO EXTEND UNTIL 30 DAYS AFTER
COMPLETION OCCUPATION OF THE MONTANA STATE PRISON ADDITION
OR JULY--17--1987, WHICHEVER--IS--EARLIER, THE EARLY PAROLE
PROVISIONS OF SECTION 46-23-201, MCA, USED TO RELIEVE PRISON
OVERCROWDING; CHANGING, AS OF 30 DAYS AFTER COMPLETION OF
THE MONTANA STATE PRISON ADDITION, THE POPULATION FIGURES
THAT WILL BE APPLIED IN THE EARLY PAROLE PROVISIONS;
AMENDING SECTION 46-23-201, MCA; REPEALING, AS OF 30 DAYS
AFTER COMPLETION OF THE MONTANA STATE PRISON ADDITION,
SECTION 2, CHAPTER 235, LAWS OF 1983; AND PROVIDING AN
EFFECTIVE DATE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2, Chapter 235, Laws of 1983, is
amended to read:

"Section 2. Termination date. The provisions enacted
in (3) and (4) of section 1 of this act terminate on 30 DAYS
AFTER THE PRISON HOUSING UNITS FUNDED IN HB 833 OF THE 48TH
LEGISLATURE ARE OCCUPIED, BUT IN NO EVENT SHALL THAT DATE
EXTEND BEYOND July 17, 1985 1987."

NEW SECTION. Section 2. Effective date. This act is
effective July 17, 1985.

SECTION 1. SECTION 46-23-201, MCA, IS AMENDED TO READ:

"46-23-201. Prisoners eligible for parole. (1) Subject
to the following restrictions, the board shall release on
parole by appropriate order any person confined in the
Montana state prison or the women's correction center,
except persons under sentence of death and persons serving
sentences imposed under 46-18-202(2), when in its opinion
there is reasonable probability that the prisoner can be
released without detriment to the prisoner or to the
community:

(a) No convict serving a time sentence may be paroled
until he has served at least one-half of his full term, less
the good time allowance provided for in 53-30-105; except
that a convict designated as a nondangerous offender under
46-18-404 may be paroled after he has served one-quarter of
his full term, less the good time allowance provided for in
53-30-105. Any offender serving a time sentence may be
paroled after he has served, upon his term of sentence,
17 1/2 years.

(b) No convict serving a life sentence may be paroled
until he has served 30 years, less the good time allowance
provided for in 53-30-105.

(2) A parole shall be ordered only for the best

REFERENCE BILL

HB 200

interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 545 744 by 215 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection (1).

(4) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (3) do not apply. (Subsections (3) and (4) terminate July 1, 1985--sec. 2, Ch. 235, L. 1983.)"

NEW SECTION. SECTION 2. REPEALER. SECTION 2, CHAPTER 235, LAWS OF 1983, IS REPEALED.

NEW SECTION. SECTION 3. EFFECTIVE DATES. (1) SECTION 1--IS 2 AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(2) SECTIONS-2-AND-3-ARE SECTION 1 IS EFFECTIVE 30

DAYS AFTER THE GOVERNOR DECLARES BY EXECUTIVE ORDER THAT THE PRISON HOUSING UNITS FUNDED IN HB 833 OF THE 48TH LEGISLATURE ARE OCCUPIED.

-End-

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 23, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, January 23, 1985 at 9:00 a.m. in Room 312-1 of the State Capitol Building.

ROLL CALL: All members of the committee were present with the exception of Rep. Gould who was previously excused.

CONSIDERATION OF HOUSE BILL NO. 200: Hearing commenced on HB 200. Steve Waldron, chief sponsor of the bill, testified in support of it. This bill amends the law as an automatic repealer. It deals with the over-crowding problem at the prison. He said that this repealer can be shortened quite a bit because the construction at the prison will be complete some time around December of this year or very early in 1986. The current law says that if or when the population at the prison exceeds its designed capacity of 545 by 215 inmates for a total of 760, or the women's prison at Warm Springs exceeds its designed capacity of 35 inmates, then the parole board may give early parole of 120 days to those individuals who would be paroled otherwise. It allows the parole board to review inmates for eligible parole and release them 120 days early. It is a very restrictive law as it now stands. It is permissive in that the parole board does not have to release the inmates early. They review each one on an individual basis. The inmate has to serve 12 months before he can be released for an early parole. The earliest parole would be 120 days.

The current law will terminate July 1st of this year. That is several months too soon. He continued on to state the problems that overcrowding in prisons can present. Rep. Waldron stated that he had some proposed amendments that would lower the time from July 1, 1987 down to when the facilities will be completed.

Curt Chisholm, deputy director for the Department of Institutions, spoke in favor of the bill. He submitted copies of the amendment that Rep. Waldron had referred to. (Exhibit A) This amendment allows this law to go into existence 30 days after the prison housing units are occupied by inmates. We are not changing the provisions of the authority -- we are simply asking for a little more time. He also stated that the parole board

has been extremely conservative in allowing inmates to leave prison under this early release provision.

Hank Burgess, chairman of the State Board of Pardons, offered testimony. He supports this legislation as a continuation of the statute that is in existence. The board has agreed to do whatever it can to keep the prison population down. The board knows the dangers that are present when prison population exceeds its limits. We see the bill as a temporary device. This past year, even though two inmates were released under this statute, it gears the experience with the regular parole system.

Cathy Campbell, representing the Montana Association of Churches, stated her support of the bill and submitted their position paper on corrections. (See Exhibit B)

There being no further proponents, Chairman Hannah requested testimony of any opponents, if any. There being no opponents, Rep. Waldron briefly closed.

Rep. Waldron again expressed his concern for the prison overcrowding. Chairman Hannah opened the floor up to questioning from the committee.

Rep. Keyser stated his support for the bill with the proposed amendments included. In response to a question asked by a member, Mr. Burgess stated that the prison is getting fewer and fewer first time offenders. Judges are reluctant to send first time offenders to prison due to overcrowding conditions.

Rep. Miles suggested that an amendment be included in the previous amendment offered by Rep. Waldron. The amendment would add the language after "Legislative Session are occupied," "but no later than July 1, 1987."

In response to a question from one of the committee members, Mr. Chisholm said that the prison construction is on schedule even though there have been a few delays. Rep. Waldron stated that it takes time to initiate building projects.

Rep. Poff asked Mr. Burgess how many members interview inmates on the parole board. Mr. Burgess said there are three.

Rep. Montayne requested some statistics on the crime projections. Mr. Chisholm stated he has no way of knowing

how long the present building capacity will accomodate this state. In response to that question, Rep. Waldron said that it is extremely difficult to project the number of prisoners there will be from one year to the next.

Rep. Brown stated that he supported the concept of this bill; however, he wanted to know how the word "occupy" is defined. Mr. Chisholm said it means when we are actually allowed to move inmates into those new facilities and start using them on a permanent basis. He feels the language should be left as "occupy." Rep. Brown stated that he is uncomfortable with that.

There being no further discussion, hearing closed on HB 200.

CONSIDERATION OF HOUSE BILL NO. 207: Hearing commenced on HB 207 with its chief sponsor, Ray Peck, testifying on its behalf. Rep. Peck feels this is a relatively simple bill. The bill would basically increase the maximum jurisdictional amount in civil cases in justices' courts to \$7,500. The last increase was made in 1981. At that time it was increased from a \$1,500 to a \$3,500 level. He pointed out to the seven subsections of the bill referring to the different activities within the court. The people who requested the bill to be drafted were primarily concerned with subsection (a). They are small financial institutions who feel that the \$3,500 is insufficient for their needs anymore when they go to justice court. He thinks it just a matter of getting expensive justice for legal proceedings that we are talking about here. He feels that if we don't do that, we will see a reduction in the availability of credit. He was concerned for young people who do not have well established credit ratings.

There were no further proponents of the bill.

Mr. Gordon Morris, representing the Montana Association of Counties, testified in opposition to this bill. He stated that they have significant problems with this particular bill. He thinks the increase of jurisdictional authority should not be viewed as any suggestion of the capabilities of magistrates from around the state. Our concerns are primarily in regard to the expansion of the caseload within the J.P. court system throughout the state and the subsequent decrease in caseloads within the district courts. The net effect of that transfer of jurisdictional authority is to reduce the expenditures of the district court levy within all the counties of Montana. The consequences

would be spelled out by way of an increase -- expenditure being required of county general funds which are already over-extended in too many cases, particularly in the J.P. portion of county general fund budgets. District Court filing fees are \$25.00 per case whereas J.P. Court filing fees is \$7.50 per case. As a result of the increased jurisdictional authority to J.P. courts, you will be losing significant non-tax revenue out of the district court fund by way of that \$25.00 filing fee.

Glen Drake, representing the American Insurance Association, testified in opposition to this bill. Mr. Drake stated that he has no problem with the purpose of the bill, but he stated he has a problem with increasing the jurisdictional limits under section d and c. He doesn't feel that J.P. courts are designed to handle the more complicated cases. He also stated that J.P. courts do not have the discovery procedures that district courts do. He also feels the number of appeals from J.P. courts to district courts will increase. There were no further opponents.

Rep. Peck gave a brief closing statement. Rep. Peck feels that Mr. Morris has his wires crossed regarding the fiscal note question. There is no state money involved here, that is why a fiscal note is required. Although the case-load in J.P. court may increase, he feels that the case-load in district court will decrease. Chairman Hannah opened the floor up for questioning at this time.

Rep. Addy is concerned about the fact that we are actually losing more money every time we have a case filed in district court from justice court. Mr. Morris didn't necessarily agree with Rep. Addy's assessment. Mr. Morris stated that you are losing \$7.50 in every case filed in justice court and you are losing \$25.00 in every case filed in district court.

Rep. Keyser questioned Rep. Peck if he had numbers of actual statewide cases which would have gone from justice court to district court within the last two years if the proposed bill were enacted. Rep. Peck said he thought it would be very difficult to produce that information. Rep. Keyser wanted to know if the J.P. association is in favor of this bill. Rep. Peck stated that he gets the impression that they are neutral on it.

Rep. Montayne expressed his opposition to the bill stating

that he believes the credit unions loan money on just about anything too freely. There being no further discussion, hearing closed on HB 207.

At this time, Chairman Hannah called an executive session to order.

ACTION ON HB 200: Rep. Brown moved that HB 200 DO PASS. The motion was seconded by Rep. Bergene. Rep. Keyser moved to adopt the proposed amendments submitted by the department. The motion was seconded by Rep. Hammond. The amendment would be reflected in the title of the bill also. It was Rep. Brown's opinion that the bill is all right the way it stands now. He didn't see the purpose of amending it in the first place. On that basis, Rep. Brown made a substitute motion to include the date of December 31, 1986. The motion was seconded by Rep. Hammond. Discussion followed before a vote was taken on Rep. Brown's substitute motion.

Rep. Brown stated that he has no problem with the way the bill is drafted to give them two years regardless of how long the construction takes. He feels that the population of that facility is going to be over the limit the day it is occupied. He feels they need the initial language of the bill without the proposed amendments.

Rep. Keyser stated his objection to Rep. Brown's substitute motion. He does not agree with Rep. Brown's figures. He said that we do not know what the projected increase of inmates will be. He went on to say that he is very comfortable in adopting the department's amendment and Rep. Miles' proposed amendment.

A roll call vote was taken on the substitute motion, and it failed 6 to 11.

The question was called on the original motion made by Rep. Keyser to adopt the department's proposed amendments and to further adopt the amendment suggested by Rep. Miles to include the language, "but in no event shall that date extend beyond July 1, 1987". The motion would also be reflected in the title of the bill. Motion carried unanimously.

Rep. Brown further moved that HB 200 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond and carried unanimously.

ACTION ON HB 207: Rep. Krueger moved that HB 207 DO NOT PASS. The motion was seconded by Rep. Rapp-Svrcek.

Discussion followed. Rep. Krueger explained his motion by saying he felt justice courts have limited jurisdiction. He feels this bill is expanding the jurisdiction overall and doing so very significantly. He said possible abuses could result from the passage of this bill. He further believes that passage of this bill will increase levels of default, and it will create an undue hardship on defendants.

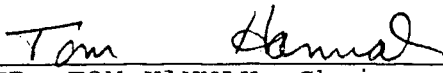
Rep. Addy stated his opposition to the motion and made a substitute motion to pass the bill with an additional amendment. (He later withdrew this motion.) Discussion followed on Rep. Addy's motion.

Rep. Keyser opposed the substitute motion and feels the bill should not pass. He said the committee should remember that the J.P. court is not a court of record. It was Rep. Mercer's opinion also that this bill should be killed.

The question was called, and the motion for a DO NOT PASS passed with Reps. Addy and Hammond dissenting.

Chairman Hannah informed the committee that he has assigned a subcommittee to review the water access bills and report their findings to the full committee. Appointed to serve on the subcommittee were: Reps. Keyser (who will act as chairman), Hammond, Krueger, and Mercer.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 10:50 a.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-23-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

January 23

1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 207

FIRST reading copy (WHITE)
color

INCREASING JUSTICES' COURTS CIVIL JURISDICTION FROM \$3,500 to
\$7,500

Respectfully report as follows: That HOUSE Bill No. 207

DO NOT PASS

~~DO NOT~~
DO PASS

STANDING COMMITTEE REPORT

January 23

19 85

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **200**

FIRST reading copy (**WHITE**)
color

EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON OVERCROWDING

Respectfully report as follows: That **HOUSE** Bill No. **200**

be amended as follows:

1. Page 1, line 6.

Following: "UNTIL"

Insert: "30 DAYS AFTER COMPLETION OF THE MONTANA STATE PRISON
ADDITION OR"

Following: "July 1, 1987,"

Insert: "WHICHEVER IS EARLIER,"

2. Page 1, line 15.

Following: "terminate"

Strike: "on"

Insert: "30 days after the prison housing units funded in
HB 833 of the 48th legislature are occupied, but in
no event shall that date extend beyond"

AND AS AMENDED,

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-23-85 H.B. BILL NO. 200 TIME 10:30

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown made a substitute motion to include
the date of December 21, 1986 in the bill. The motion was
seconded by Rep. Hammond and failed 6 to 11.

Exhibit A
HB 200
1-23-85

Amendments to HB 200, Introduced Bill

F.1, Line 15 and 16

After the word "terminate"

Delete: "on July 1, 1987"

Insert: "30 days after the Prison housing units funded in HB 833 of the
48th Legislative Session are occupied," ~~no later than July 1, 1987~~

"6 - 2 1/2 IP. A
of 1, 1987"

6 - 2 1/2 or 1, 1987

Exhibit B
1-23-85 HB 200



CORRECTIONS

Montana
Religious Legislative Coalition [MRLC]
Committee of the
Montana Association of Churches
1981

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 24, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, January 24, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. Gould who had been previously excused.

CONSIDERATION OF HOUSE BILL NO. 246: Hearing commenced on HB 246 with Rep. Connelly, its chief sponsor, testifying. She said what this bill basically does is ask for authority to the court to seize a driver's license on conviction requiring mandatory suspension.

Larry Majerus, administrator for the Motor Vehicle Division, testified in support of the bill. He told the committee that this bill was requested by the department because over the last few years there has been an enormous increase in the their workload largely due to the increase of enforcement of DUI's. As a result, they have had to suspend more licenses.

There being no further proponents nor opponents present to testify on the bill, Chairman Hannah opened the floor up for questioning.

In response to a question of Rep. Eudaily's, Mr. Majerus said there is not authority in the law for judges to suspend. The judge does not actually do any suspending or revoking of driver's licenses in DUI cases.

There being no further questions, hearing closed on HB 246.

CONSIDERATION OF HOUSE BILL NO. 286: Rep. Les Kitselman, chief sponsor of this bill, spoke in favor of the bill. Rep. Kitselman stated that this bill is a bill that takes care of a problem that has arisen with the theft of utilities. He referred to an incident that happened in Billings. This bill defines what bypassing is, what the individuals are, what tampering means, what utilities mean, what services mean and then simply states that the utility companies would be able to recover reasonable values after a person has been found liable of a theft. He referred to page 3, line 3 to 6 stating that this simply says that the utilities can receive up to three times the reasonable value of the utility's services actually provided and shall award to the utility its costs, reasonable

attorney fees, etc.

John Alke, representing Montana-Dakota Utilities, stated his support for the bill. He said the meat of the bill is really spelled out in section 4 of the bill. He feels that litigation is critical. It is not intended to actually be used against our customers, but rather it is intended to act as a deterrent from attempting to steal utility services. He said that there is a very small group of people who do this who do it at the expense of the other customers. He also said this tampering is a highly dangerous and deadly thing to be involved in. Mr. Alke informed the committee that the county attorney has a workload that will not permit them to prosecute these people.

Mike Zimmerman, attorney for the Montana Power Company, appeared and spoke in favor of this bill. He passed around pictures that show different meters that are being tampered with. He said the power company supports this bill because tampering and theft is a problem -- and the problem that results is that the remaining customers must pick up this additional cost that they would not otherwise have to do. He believes this bill will provide a public policy signal that meter tampering will not be tolerated in this state. Not only will it deter theft in tampering, it will also provide a safety factor to keep people from tampering with the deadly force of electricity.

David Dietrich, attorney for Pacific Power and Light, also testified in support of the bill. He informed the committee that in 1984 there were 24 incidents of meter tampering in the Kalispell area. None of these were prosecuted by the county attorney's office. The problem that remains is that there is not an adequate civil remedy.

There being no further proponents or opponents present to testify on the bill, and Rep. Kitselman closing, the floor was opened to questioning from the committee.

In response to a question asked by Rep. Rapp-Svrcek, Mr. Alke said they determine how long the meters have been tampered with by computing on the low side the electrical usage of the home and the number of people living in that home.

Rep. Rapp-Svrcek requested Rep. Kitselman to state his reasoning behind the three times the reasonable value of the utility services. Rep. Kitselman they calculate this on the low side, and he further feels this is not unreasonable.

There being no further questions, hearing concluded on HB 286. Chairman Hannah called an executive session at this time.

ACTION ON HB 246: Rep. Addy moved that HB 246 DO PASS. The motion was seconded by Rep. Hammond. There being no discussion and the question being asked, the motion passed with Rep. Brown dissenting.

ACTION ON HB 286: Rep. Grady moved that HB 286 DO PASS. Rep. Eudaily seconded the motion. Discussion followed.

Rep. Rapp-Svrcek stated that he has a few problem with the bill. He does agree with the intent of the bill; however, he questions being able to charge a customer, and being able to receive from the customer three times the reasonable value of the utility services given the fact that the utilities cannot really come up with an accurate amount of what services were used.

Rep. Mercer moved to amend the bill by deleting section 5 of the bill. He also wishes to amend page 2, line 5 by adding after "service" the words, "with the intent to obtain the utility service at less than its reasonable value."

Rep. Keyser spoke against the motion. He said that by adding the word intent, you have placed an absolute and almost an impossible burden upon these companies of going into court. He spoke strongly against adding the word intent and feels that by doing so, the bill will be hurt.

Rep. Rapp-Svrcek spoke in favor of Rep. Mercer's amendment. He feels that this language would only protect someone who inadvertently damages their meter.

Rep. Montayne feels that if anything should be amended, the penalties should be made stiffer.

Representative Miles said she has a lot of problems with this bill as far as the liability portion of the bill especially where it concerns other occupants of the building the meter is being tampered with. She stated further that she had no problem as to the intent of this legislation.

Rep. Krueger moved that HB 286 BE TABLED until further action can be taken on it perhaps tomorrow. The motion to table failed 7-9 after having been seconded by Rep. Rapp-Svrcek. (See roll call vote)

The committee considered the previous motion made by Rep. Mercer to include on page 2, line 5 the intent language as previously stated. The motion was seconded by Rep. Eudaily and a roll call vote was taken. The motion failed 4-12.

Rep. Mercer further moved that HB 286 be amended to delete section 5 in its entirety. Rep. Eudaily seconded the motion, and discussion followed.

Rep. Grady spoke against this amendment while Rep. Addy offered his support for the amendment. The question was called and the motion carried unanimously.

Rep. Addy offered another amendment which would amend page 3, line 4, after "provided" strike ", and" and place a "." in lieu thereof and on line 5, strike, "including" and insert, "in addition, the court shall award the prevailing party its costs including reasonable attorneys fees incurred in maintaining or defending the action." Rep. Addy is trying to make this a reciprocal item to be recovered by the prevailing party.

Rep. Hannah explained the intent of the amendment which would give both parties an equal standing as far as payment of costs, attorneys fees to the prevailing parties.

Rep. Mercer spoke in opposition of the amendment. He thinks the legislature should carefully consider what they are doing when they provide these attorney fees. He says this would not give the people incentive to settle their disputes out of court. He stated that Rep. Addy's amendment is needed, but after it is adopted, Rep. Mercer wishes to propose an amendment which would pull attorneys fees out. The question was called for, and the motion to adopt Rep. Addy's amendment was carried with Reps. Eudaily and Grady dissenting.

Rep. Krueger moved to amend on page 3, line 2 by striking the word "shall" and inserting in lieu thereof the word, "may"; also strike the word, "for" and insert "up to". He said this amendment would allow the court to provide treble damages as he so desires up to three times the reasonable value. So basically, the amendment would give the court discretionary authority.

Both Reps. Bergene and Grady spoke in opposition of the amendment. Rep. Grady feels that the amendment would take the intent question out. He feels that the deterrent would be taken away if the amendment were adopted. Also speaking in opposition of the amendment was Rep. Montayne.

Rep. Krueger feels that his proposed amendment would benefit both parties and that the deterrent would not be taken away.

It was Rep. O'Hara's feeling that the utility companies would be conservative in their estimates. They are going to be very careful that they can prove what the damages were. He feels that Rep. Krueger's amendment would take out the incentive. Rep. Keyser also spoke against the amendment.

A roll call vote was taken on this motion. Motion failed 13-3. (Rep. Rapp-Svrcek seconded this motion.)

Rep. Keyser further moved to amend page 3, line 4 following the word, "provide" by striking lines 4, 5, 6, 7, and 8 in their entirety. Rep. Miles seconded the motion.

Rep. Addy spoke in opposition to the motion to amend. He said that by striking this language, you are not making it less likely that the power companies are going to bring these actions -- you are making it less likely that the poor innocent consumers are going to defend themselves.

Rep. Mercer stated that any time we extend attorney fees, we should be careful. He pointed out the fact that courts are already overly crowded with litigation and that people should be encouraged to resolve their differences outside the court system.

Rep. Rapp-Svrcek did agree with Rep. Mercer in that the courts are definitely overcrowded; however, he feels we should provide an equal footing between the power companies and the defendants. It was Rep. Keyser's opinion that the defendant has a lot of recourses against the power companies if they are charged wrongly.

Rep. Krueger moved a substitute motion to amend line 4, of page 3, after the newly adopted language, "in addition, the court shall" to strike the word "shall" and insert in lieu thereof the word, "may". The motion was seconded by Rep. Addy. The amendment would allow the award of the prevailing costs in the discretion of the court. The motion passed with Rep. Montayne dissenting.

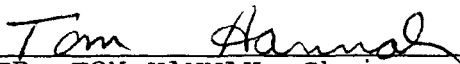
Discussion was held on Rep. Keyser's original amendment to delete lines 4, 5, 6, 7 and 8 in their entirety.

Rep. Grady feels that by deleting this portion of the bill will bring us back to the original intent of the bill.

The question was called and Rep. Keyser's motion carried 11-5. (See roll call vote.)

Rep. Grady moved that HB 286 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser and carried 15-2. (See roll call vote.)

ADJOURN: There being no further business, the meeting adjourned at 9:45 a.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-24-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 TIME 9:00

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Motion was made by Rep. Krueger
to table the bill until further action could be
taken. Motion was seconded by Rep. Rapp-Svrcek:
Motion failed 7-9.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 TIME 9:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Motion was made by Rep. Mercer to amend on page 2,
line 5 of the bill by adding after "service" the words, "with
the intent to obtain the utility service at less than its
reasonable value." The motion was seconded by Rep. Eudaily,
and it failed 4 to 12.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85

BILL NO. 286

TIME _____

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Krueger moved to amend page 3, line 2 by striking
the word, "shall" and inserting in lieu thereof the word,
"may"; the amendment would also strike, "for" and insert "up to".
Motion failed 13 to 3.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. H.B. 286 TIME 9:43

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Keyser moved to amend page 3, line 4 following
the word, "provide" by striking lines 4, 5, 6, 7, and 8 in
their entirety. The motion was seconded by Rep. Miles and
carried 11 - 5.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. 286 TIME 9:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Grady moved that HB 286 DO PASS AS AMENDED.

The motion was seconded by Rep. Keyser and carried 15-2.

VISITOR'S REGISTER

HOUSE

JUDICIARY

COMMITTEE

HOUSE BILL 246, 286

DATE 1-24-85

SPONSOR 246 (Rep. Connelly) 286 (Rep. Kitzelmeier)

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

Thursday, Jan. 24 19 85

SPEAKER:

MR.

JUDICIARY

We, your committee on

HOUSE

having had under consideration Bill No. 246

FIRST

reading copy (WHITE)
color

SEIZURE OF DRIVER'S LICENSE ON CONVICTION REQUIRING MANDATORY
SUSPENSION

HOUSE

Respectfully report as follows: That Bill No. 246

--DO-PASS--

STANDING COMMITTEE REPORT

January 24 1985

SPEAKER:
MR.

JUDICIARY

We, your committee on

having had under consideration **HOUSE** Bill No. **286**

FIRST reading copy (**WHITE**)
color

**PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH
UTILITY METER**

HOUSE **286**

Respectfully report as follows: That..... Bill No.

Be amended as follows:

1. Page 3, line 4.
Following: "provided"
Strike: "and" through "case" on line 8.

2. Page 3, following line 3.
Strike: Section 5 in its entirety.

AND AS AMENDED

DO PASS

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 15, 1985

The fiftieth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 15, 1985, by Chairman Joe Mazurek in Room 410 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Crippen who was excused.

CONSIDERATION OF HB 155: Representative Hal Harper, sponsor of the bill, stated HB 155 deals with a problem that has been growing in recent years--the so-called sport of dog fighting. Dog fighting was made totally illegal in all of the countries in Europe more than 100 years ago. Dog fighting is illegal under the Federal Animal Act. This sport is a sadistic, bloody fight, usually to the death. In 40% of the cases, both dogs die or are mortally wounded. A dog that wins six fights is a grand champion. The dogs are usually 38-40 pound pit bull terriers. These fights are usually staged in a clandestine way. The fight itself is totally silent except for the noise of the dogs and the people. Guns and narcotics are almost always present. The main penalties they can get these people under are for narcotic and gun violations. In many cases, live animals are used for training. Since many states are passing felony laws, these people are moving into states that have misdemeanor penalty statutes. The reason the pressure is on in Montana is they seem to be moving into this area. Representative Harper feels this bill is preventive medicine. He also has amendments which will address the concerns of the falconers.

PROPOSERS: Barbara Dahlgren, President, Federated Humane Societies of Montana, presented written testimony in support of the bill (Exhibit 1). Judy Fenton, Secretary/Treasurer, Federated Humane Societies of Montana, presented written testimony in support of the bill (Exhibit 2).

OPPOSERS: Hal Williams, Vice President, Montana Falconers Association, stated they are not opposed to the bill but are concerned about the writing of it which outlaws the sport of falconry in Montana. He testified falconry is a legal sport in Montana, but page 3 of the bill, subparagraph (c), which states the use of animals in hunting and training as permitted by law, would no longer allow this. (Representative Harper stated this concern is what his amendment would address.)

QUESTIONS FROM THE COMMITTEE: Senator Towe asked what it is that falcons do that otherwise would be a problem. Mr. Williams responded as the law is written, it is pitting one animal against another. They are trained to do what they naturally do in the wild, except in relationship with the falconer. The falconers flush animals for the falcon to chase. Senator Pinsoneault asked Representative Harper why he hadn't provided that betting itself or the placing of a bet would amount to aiding or abetting. Representative Harper replied that concern is covered in the gambling laws. Representative Harper responded there are also amendments to address the concerns of the houndsmen. He further stated Representative Hannah wanted to come before the committee to testify he believed spectators should suffer the same penalties as those doing the training, and Representative Gould wanted to come before the committee to combat that position.

CLOSING STATEMENT: Representative Harper felt he wanted to keep Montana a civilized state.

Hearing on HB 155 was closed.

CONSIDERATION OF HB 187: Representative Hal Harper, sponsor of this bill, testified this would give the Department of Health the same cost recovery authority it has in the air quality and water quality areas. The number of waste water cases has risen. Most of the violations are that they refuse to submit the monthly test samples. The worst that will happen to them now is they will have to submit the test. Enforcing this is a drain on the department's funds. This money will go into the general fund. It seems like a good bill in terms of saving the state some money and getting the job done.

PROPOSERS: Frank Crowley, Assistant Attorney General with the Department of Health, presented written testimony in support of the bill (Exhibit 3). Mr. Crowley asked that the committee adopt the amendment shown on the last page of his testimony.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked who offered the amendment and why. Representative Mercer responded the state agency was coming in to get all of the costs, and there was no equality on the other side. There are a few in the House that don't like one-sided attorney fees. They would just as soon neither side get them. Mr. Crowley stated it was never the department's intention to get attorneys' fees; it was just to get the technical costs back. They did not include attorneys' fees, just costs.

CLOSING STATEMENT: Representative Harper stated this is just an enforcement bill, and he would like to see it passed without the amendment.

Hearing on HB 187 was closed.

CONSIDERATION OF HB 700: Representative John Mercer, sponsor of the bill, stated this bill deals with plea bargaining. It is the first time the mention of plea bargaining appears in the statutes. It grows out of the case, State v. Cavanaugh. This bill seeks to reverse that opinion and provide safeguards. It tells what a plea bargain is. It says the judge cannot participate in the plea bargain. It says the judge is not required to impose the sentence required by the plea bargain. The due process comes in on page 2, lines 4-6. The reason the Cavanaugh case is bad is it requires a judge to go through all of the sentencing decisions and decide what is appropriate; it lowers the bench down to the level of being a part of the county attorney's office; and the public is not too fond of plea bargains and wants the judge to be an independent person. Section 2 says before a charge is reduced, the prosecuting attorney is required to tell the judge what the reason is and that reason must go in the minutes. This bill will give the public the reason why sentences are reduced.

PROPOSERS: Judge Jack L. Green, Fourth Judicial District, Missoula, testified he is for this bill because he thinks the supreme court has put the judges in a ridiculous and untenable position. They must be sure there is no promise of leniency, but they are stuck with a plea bargain with which they had nothing to do. The people elect judges. The public defender is not elected. This allows the county attorney to decide what the sentence is, the judge is then stuck with it, and the judge takes the heat for it. At the time a plea bargain is arranged, they generally do not have the presentence investigation and report. However, the judge has this information at the time he imposes sentence. As a district judge, he resents being forced to negotiate with a criminal as to what we are going to do with him. The legislature makes the law, and the judges enforce it. If the defendant feels he received a sentence that is out of line, it can be reviewed by the sentence review board. Mark Murphy, Assistant Attorney General assigned to the County Prosecutors Services Board, testified they have looked at this bill and approve it. They believe the negotiation process for a plea is a process between the prosecutor and the defendant. The defendant knows that what he is bargaining for is a recommendation in exchange for dismissal of other charges. That is what the prosecutor can deliver. He thinks one of the most important parts of this bill is it allows judicial independence. It also encourages good-faith bargaining at this point. The judge has to be accountable for the decision. Joe Roberts, from the Attorney General's office, stated they think the section on

page 2 is very important as far as the defendant is concerned. The defendant has to clearly understand it is a recommendation that is being bargained for. The defendant's rights are being protected by this legislation by putting into practice what has been developed. He feels the sentencing hearing is a very important part of the process. The judge learns a lot at that hearing, as there is an opportunity for a victim to come to a sentencing hearing and give testimony.

OPPONENTS: William Boggs, Missoula County Public Defenders Association, spoke on behalf of his association and on behalf of all of the civil litigants of Montana and the taxpayers of the state. He testified the taxpayers will be paying for this bill if it passes, as there will be a drastic increase in criminal jury trials. About 75% of the cases are currently settled by plea bargaining, so the court will have to sit and hear criminal cases. Public defenders get supplementary money when they go to trial. Many resources are tied up in a criminal trial: police officers, two prosecutors, two public defenders, and usually a private investigator. Mr. Boggs thinks the fiscal impact on the Montana taxpayers should be kept in mind. The sponsor is obviously not too fond of plea bargains. The public is less fond of paying three or four times the amount it puts out now for criminal prosecution and defense. The current rule on plea bargains is not intended to lower the bench. Do you think it lowers the bench when two contractors resolve their dispute out of court? Settlements work because both sides give up something. This bill overturns the rule on plea bargains which 48 states have in effect. It takes us back a few decades in administration of law. He foresees judge shopping. In talking about the fairness this bill provides for a defendant, there is nothing to lose by going to trial, because if you plead guilty, you are sure you will get convicted. He would not advise any client to plead guilty if this bill is passed.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Judge Green to respond to Mr. Boggs' testimony. Judge Green addressed the contention there will be a lot more trials. There has not been a big decrease in the number of trials since the Cavanaugh decision. Senator Towe stated many judges already indicate whether or not they will accept plea bargains. Judge Green then addressed Mr. Boggs' contention about the expense. He stated the public defense system itself has created a great increase of public assistance. Any criminals cost the people money. This will not make that much difference in the cost of these prosecutions. Senator Towe asked if the judge would not indicate in advance whether he would accept the plea bargain, would he counsel his client to accept it? Senator Towe stated ultimately the guilt or innocence of an individual is irrelevant; what is relevant is whether the evidence will prove it. Judge Green pointed out you don't sign a contract until you see the terms.

ADDITIONAL TESTIMONY FROM OPPONENTS: Chairman Mazurek then allowed Karl Englund, representing the Montana Trial Lawyers Association, to testify as he was late arriving at the hearing due to his testifying on another bill being heard at the same time. Mr. Englund stated our court adopted the rules that are contained in the federal rule E(4) that were proposed by the Federal Law Institute and the American Bar Association. At the very least, this bill is premature at best. We ought to give it a chance to work and see how it works.

CONTINUATION OF QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault stated as far as this agreement is concerned, he asked if Judge Green, sitting on the bench, have any opposition if the bargain offered several alternatives. He asked if he would find that to be proper under this bill if it were to pass in this form. Judge Green responded yes. Senator Towe asked if there were any possible compromise in suggesting we ought to make the presentencing procedure available before the judge has to make a decision on it and then allow for an alternative plea. Then the judge, after seeing all of the facts, can make up his mind. Representative Mercer stated that would be doing a presentencing investigation before someone pleads guilty. Judge Green replied in the presentencing investigation and report, they give their version of the crime, and you would have them saying what they did.

CLOSING STATEMENT: Representative Mercer stated the fiscal argument is completely invalid. This changes our system back to what we had for years. They have had this rule and have not seen any impact. People that go to trial seem to need more of a penalty than someone who pleads guilty and seems to be remorseful.

Hearing on HB 700 was closed.

CONSIDERATION OF HB 706: Representative John Mercer, sponsor of HB 706, testified this bill does two things: includes firefighters in the definition of other persons and expands the definition of occupied structures to other property. As far as arson, if a firefighter is responding to an arson case and is put in danger, he should be covered. Representative Mercer feels this just clarifies what is already there. A motor home or a motorboat might be an occupied structure.

PROPOSERS: Bruce Houston, Deputy State Fire Marshal, testified the state fire marshals are in favor of this bill as it adds verbiage which is needed for better definition. Creighton Sayles, Missoula Rural Fire Department and Special Deputy, State Fire Marshals Service, testified the law enforcement people already have similar language at the present time. Hopefully this bill will give encouragement to county attorneys and prosecutors.

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OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked what other property would include. Mr. Petesch responded by definition, a vehicle is an occupied structure.

CLOSING STATEMENT: None.

Hearing on HB 706 was closed.

CONSIDERATION OF HB 831: Representative John Mercer, sponsor of HB 831, testified this bill brings our intimidation statute back to life. It was held unconstitutional by the Ninth Circuit Court of Appeals. A mere threat cannot be a crime unless you fear it will be carried out. Threatening to commit any criminal offense was an infringement on free speech. The Wirtz case states that can be punished as intimidation, but not under this statute, because it is too broad.

PROPOSERS: Joe Roberts, Attorney General's office, stated they asked Representative Mercer to introduce this bill. They support this legislation as it cleans up the statute. They believe this should withstand any First Amendment challenge to it after this.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 831 was closed.

CONSIDERATION OF HB 353: Representative Richard Nelson, sponsor of the bill, testified this bill states you don't have to go into a building with the idea you intended to commit \$300 worth of damages to be convicted for aggravated burglary. He believes this is a method of getting the two definitions of burglary together.

PROPOSERS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if you then had the separate offense of aggravated burglary. Representative Nelson responded this makes it aggravated.

CLOSING STATEMENT: None.

Hearing on HB 353 was closed.

CONSIDERATION OF HB 200: Representative Steve Waldron, sponsor of HB 200, testified last session in dealing with the prisons, we realized we had a serious overcrowding problem. We provided funds for expansion. This bill would move a prisoner's parole eligibility up four months, although the inmate must have served at least 12 months before this safety valve can kick in. The bill has a repealer on it. The prison will not be completed at least until December of this year and maybe not until January or February of next year. The Department of Institutions wanted this safety valve to be used by the parole board until the prison is completed. The House amended the bill to provide the same safety valve with a much higher threshold when the expansion is complete. The bill has the support of the parole board.

PROPOSERS: Curt Chisholm, Deputy Director, Department of Institutions, testified this bill was introduced at their request. They are trying to extend the authority in HB 546 which goes out of effect June 1, 1985, for another year or until 30 days after the new units are occupied. The overcrowdedness of the prison is not only a matter of finding a bit of space; it also puts a strain on support services. Cathy Campbell, Montana Association of Churches, testified they are opposed to the warehousing of prisoners as rehabilitation cannot take place under these circumstances. Mr. Chisholm added Hank Burgess, chairman of the parole board, asked to be put on record as being in support of the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek stated on the matter of the women's prison, it is not a matter of exceeding the design capacity. He asked if they should put in a certain percentage of excess. Representative Waldron replied their concern was when you have that facility filled, it is stacked. If you want to exceed that, you are asking for more problems. If you want to say a design capacity of 30, that would be more appropriate than 35. Senator Mazurek asked what the design capacity of the women's prison was. Mr. Chisholm replied there is no design capacity. If you go beyond 35, it causes problems.

CLOSING STATEMENT: Representative Waldron stated he was reluctant to carry this last time because of the strong feelings against letting prisoners out early. However, overcrowding causes riots and costs lives. This is a modest, cautious method of avoiding overcrowding. He has received promises from the chairman of the parole board that they will continue to utilize this cautious approach.

Hearing on HB 200 was closed.

CONSIDERATION OF HB 681: Representative Jan Brown, sponsor of this bill, presented written testimony to the committee (Exhibit 4).

PROPOSERS: Patrick Sheehy, President, Montana Society of Hospital Community Relations and Development, presented written testimony in support of the bill (Exhibit 5). Bill Leary, President, Montana Hospital Association, testified 57 of their hospitals are in support of this bill. This will allow them over the interim to work with the media and law enforcement agencies to develop better communications. They know some of their hospitals do release this kind of information to the news media. They have been encouraging them to try to work out suitable arrangements along these lines. Mike Meloy, on behalf of the Montana Press Association, testified the reason for subsection 4 was because as the confidentiality act now reads, some hospitals have construed this to be a prohibition against releasing any information about anyone for any reason. The press association is in favor of HB 681. All it does is reinstate a tradition which had been adopted prior to the confidentiality act which arose out of a community's asking about a friend's status. It lets the newspaper and the hospital give some information to the public about how the guy is doing. When the confidentiality act was passed in 1979, no one knew what the implication would be with hospitals. As far as he knows, there has never been any threat of a lawsuit or any lawsuit which arose out of releasing someone's general condition.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked who made the determination as to what information would be released. Mr. Leary replied the doctor would. In small hospitals, you would have to go to the chart. In a larger hospital, there is a list. Senator Mazurek stated this committee killed a similar bill last session without too much thought because it was concerned about the depth of it. After that committee action, he was amazed at the number of people who called and said that is private information and should not be released under any circumstances. He asked why the injury has not been tied into some sort of public accident. He is concerned that if you go to the hospital for any reason, anyone can obtain that information. Mr. Sheehy replied that in every other state, there is no law that requires them to release any information to the public. The hospitals' preoccupation is with the patient's privacy. The only reason they are in favor of this bill is because the community has an interest in knowing what a person's basic condition is in the hospital. The policy is they will only reason the information on a public record case. Senator Towe asked what a public

record case was. Mr. Sheehy replied the person has been able to get the information from a legitimate source. Senator Towe asked if that meant the individual who checks himself into the hospital will be able to maintain his confidentiality. He asked if a public record case included all newsworthy cases. Mr. Sheehy replied they would have had to have gotten the name from an official agency. Senator Towe asked if that applied when the governor might be in the hospital. Mr. Sheehy replied that is a good question. In that case, the hospital may not be the source, but the news media will get it one way or the other. Senator Blaylock pointed out once you become a public officer, it is sine die. Senator Towe stated the existence of his hospitalization would be confirmed even if his condition weren't. Mr. Sheehy stated the existing statute is putting people in their profession in an awkward position. They must currently get the patient to sign a release. Senator Mazurek stated he has heard Representative Hannah talk about the impact on the family in this type of situation. What you are saying is in any instance, whether newsworthy or not, you can give that information out, although maybe the law enforcement provision makes it appropriate. Mr. Sheehy replied the patient has the right to ask the hospital not to release any information about him. They would intend to include that in the guidelines. They cannot guarantee the patient's privacy will be protected every time. Senator Towe asked what their reaction would be to adding the words "provided the existence of the hospitalization is publicly known or newsworthy" following the word "FACILITY" on page 3, line 13. Mr. Meloy responded he would suggest using the words "public office" or "public figure." He struggled with a definition for a couple of months trying to find anything that would include any type of public record case and still provide the limitations that others would not be covered by, but he was unable to come up with anything. Mr. Sheehy said he would be satisfied with the amendment suggested by Senator Towe.

CLOSING STATEMENT: Representative Brown stated Representative Winslow helped with the last amendment on the House floor, and she was sure he would be willing to help work with them on any additional amendments.

Hearing on HB 681 was closed.

The committee then recessed for five minutes while it moved to Room 402 to take executive action on bills before the committee.

TABLING OF HB 808: Senator Towe moved HB 808 be TABLED. The motion carried unanimously.

FURTHER CONSIDERATION OF HB 265: Senator Towe stated he has been told the author of the bill will kill it if the committee amends it. He questioned whether the committee should waste its time working on the

bill if it will only be killed. Senator Mazurek responded you are engaging in a political game that must be fought in the papers. He would prefer not to fight that battle here in the committee. Senator Towe moved that HB 265 be amended by adding Ron Waterman's amendments and that it be given a BE CONCURRED IN recommendation. Chairman Mazurek stated he has previously announced the committee would not act on the bill without informing the public before it does so, however, he stated he would accept Senator Towe's motion believing it has been made after full consideration of the consequences. Senator Yellowtail asked what the effect of the passage or failure of the motion would be. Senator Towe responded the effect is they either leave it alone just like they want it and pass it out, and if we amend it, they'll kill the bill. Senator Shaw further explained that if the committee were to vote down the motion, the bill would remain in the committee and, hence, the subcommittee for further work. The motion failed with Senator Towe voting in favor.

ACTION ON HB 831: Senator Shaw moved HB 831 be recommended BE CONCURRED IN. Mr. Petesch explained this bill removes the objections the Ninth Circuit Court of Appeals had. The motion carried unanimously.

ACTION ON HB 706: Senator Shaw moved HB 706 be recommended BE CONCURRED IN. Mr. Petesch stated the question was what an occupied structure was. This bill codifies an Attorney General's opinion which differentiates between property on which structures customarily are found and unoccupied structures. He doesn't know what occupied property is. Representative Mercer said it is a vehicle, but that is covered in occupied structure. Senator Mazurek stated we either need to define it or get it out. He asked if we needed the bill. Mr. Petesch stated Montana statutes say "places another person in danger." The Attorney General says it doesn't matter if it is a fireman. He stated if you want to codify the Attorney General's opinion, we need the bill. Senator Brown moved as a substitute motion that we amend the bill as follows:

Page 2, line 4..

Following: "structure"

Strike: remainder of line 4 through "property" on line 5

The motion carried unanimously. Senator Mazurek stated by sending the bill back, you are saying the law is what the law is. Senator Pineseault moved HB 831 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

FURTHER CONSIDERATION OF HB 155: Senator Towe suggested changing the wording on page 2, lines 12-13, to read "any cock, bird, dog, or living creature except man." Mr. Petesch pointed out that would have the

effect of legitimizing the old bear and bull fights in Montana. Senator Mazurek suggested changing the wording to "or mammel." He then asked Mr. Petesch to work on these amendments. Senator Towe also stated he had some trouble with "participants." He suggested we strike the word "such" on page 3, line 2, and replace it with the word "any." He also suggested changing the wording on page 3, line 3, to read "exhibition in which animals are fighting, for the purpose of" He believes that would limit it to a participant.

TABLING OF HB 353: Senator Mazurek stated he thinks this goes too far. He believes it's burglary to even enter a residence. If you intend to commit any offense (trespass), that makes it aggravated burglary. Senator Towe pointed out weapons or bodily injury must result. There also must be intent to commit an offense. Senator Pinsoneault stated this bill expands the scope of present law. Mr. Petesch pointed out the biggest effect of this would be if the guy takes less than \$300 worth of merchandise and he negligently injures somebody, not only is it burglary, now it is aggravated burglary. Senator Blaylock asked if the bill were needed. Senator Towe replied it's okay. Senator Pinsoneault did not feel it was earthshaking. Senator Towe pointed out the penalty for aggravated burglary is 40 years and a \$50,000 fine, while the penalty for non-aggravated burglary is 10 years and a \$50,000 fine. Senator Blaylock moved HB 353 be TABLED. The motion carried with Senators Brown, Galt, and Pinsoneault voting in opposition.

ACTION ON HB 371: Mr. Petesch stated looking at the accession provision of the Uniform Commercial Code law, the UCC covers accessions, and the question becomes when the security interest attaches. Under the UCC, if the vehicle is sold, that cuts off that security interest. The problem that is unaddressed is where the bank makes a loan to buy the truck, the tires are put on, and the bank repossesses. Senator Mazurek pointed out this bill speaks only to the repossession. Senator Towe stated it is addressed if the bank makes an extension of credit after the tires are mounted, then the bank's interest is supplemental only to the extent new money is lent by the bank. He felt the UCC covers a bona fide purchaser. Senator Shaw moved HB 371 be recommended BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 286: Senator Towe moved HB 286 be amended as follows:

1. Page 2, line 20.

Following: "utility."

Insert: "Collection under subsection (2) precludes collection under this subsection."

2. Page 2, line 25.

Following: "utility."

Insert: "Collection under subsection (1) precludes collection
under this subsection."

The motion carried unanimously. Senator Towe moved the bill be further amended as follows:

Page 3, line 6.

Following: "court"

Strike: "shall"

Insert: "may"

Following: "for"

Insert: "up to"

Senator Mazurek commented the court can only enter the judgment on the finding of liability. If you want to address that, you should put the modifier in the amount of the judgment. Senator Towe replied the point may be the case was brought against somebody who bypasses knowingly or rents a house and the tenant bypasses. Senator Pinsoneault stated he liked Senator Towe's proposal because judges hate to be tied down. The motion carried with Senator Mazurek voting in opposition. Senator Blaylock moved HB 286 be amended as follows:

Page 3, line 8.

Following: "provided"

Insert: "and may award to the utility its costs, including
reasonable attorney fees, incurred in maintaining the action
and the costs, including expert witness fees, of presenting
such expert testimony as is reasonably necessary to prove the
utility's case"

The motion carried with Senator Mazurek voting in opposition. Senator Blaylock moved HB 286 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 801: Senator Towe moved HB 801 be amended as follows:

Page 3, line 16.

Following: "3."

Strike: "Application in 1985."

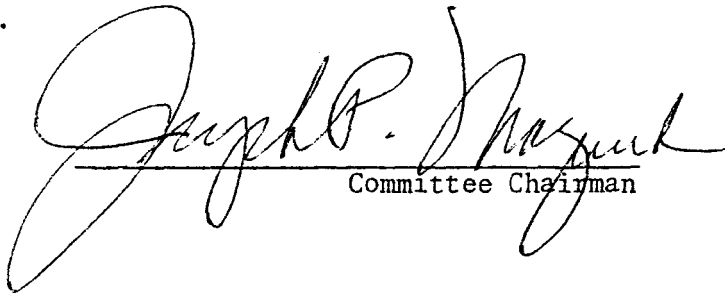
Insert: "Applicability date. This act is applicable to fiscal
years following June 30, 1985."

Mr. Petesch explained this means you use calendar year 1984 experience, but it kicks in in 1986. The motion carried unanimously. Senator Towe

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moved HB 801 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 12:38 p.m.


Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 02/58/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen			X
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			
Chairman Senator Joe Mazurek	X		

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: Lachlan McLean DATE: Mar 15, 85

ADDRESS: 834 Marshall St. Muskegon, MI 49801

PHONE: 54 97473

REPRESENTING WHOM? Senators Human Rights of Mont

APPEARING ON WHICH PROPOSAL: H.B. # 155

DO YOU: SUPPORT? V AMEND? OPPOSE?

COMMENTS: Because more than half the states have
made a civil rights a priority - states where
it remains even fundamental are seeing
an increase in the incidence of this cruel criminal
act - The original motive type people following
the fight to no grade, to a state, and that have
resumed in, to say nothing of the excessive
and the explicit law are making.

Montana should certainly be one of the
states joining the fast growing list of states to
make a civil rights a priority.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 031585

BILL NO. HB 155

Federated Humane Societies of Montana



TESTAMONY

HB 155

SENATE JUDICIARY COMMITTEE

MARCH 15, 1985

My name is Barbara Dahlgren, President of the Federated Humane Societies of Montana. I have resided in Missoula for 40 years. I have spent 22 years in animal welfare work, on a local, state, and national level. During those years I have witnessed unbelievable cruelty to animals, but never a cock or dog fight.

At the conclusion of our testimony today I'm sure you will know much more about this bloody, savage, so called "sport" than you care to.

WHAT IS DOGFIGHTING?

Dogfighting is a sadistic "contest" in which two dogs, specifically bred and trained to fight to the death, are placed in a "pit" and encouraged to attack and maul each other. This underground "sport" is presented to cheering spectators for their enjoyment and greed.

Dogfighting became an organized activity in this country in the early 1800's with the importation of the Staffordshire Terrier. This breed was originally developed in Britain as a pit dog by cross breeding the English Bulldog with various terriers to give it greater speed, agility, and intelligence. The Staffordshire Terrier is the forerunner of the American Pit Bull Terrier, the preferred breed of the dogfighting underworld today. All pit bulls are not fighting dogs, but the dog was bred purely for its bite and jaw-strength. Weighing between 38 and 40 pounds, an American Pit Bull can down a 150-pound German Shepard, because the Shepard's bite is only half as strong. By comparison, the bite pressure of a German Shepard is approximately 750 lbs. per square inch, while the pit bulls have a crushing force of up to 2,000 lbs. per square inch. Registered American Pit Bull pups frequently cost \$300 to \$500, and stud fees for champions or grand champions can top \$1,000. This may explain why once impounded, pit bulls are the breed most frequently stolen from pounds and animal shelters.

A typical dogfight "convention", consists of several matches. Main events are often preceded by contests between mixed breeds. It takes weeks or months of planning by promoters and participants. It often involves dogs from several states and other countries. Those interested communicate with each other through national magazines and newsletters. One Underground newspaper is called "Your Friend and Mine".

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Most matches are arranged by telephone and interested bettors and spectators may be notified by postcard. Handlers agree to fight their dogs on a specified date, at a weight, for a sum of money. Contracts are drawn up and signed, and contract fees of as much as \$30,000 are put up immediately, in case one of the breeders forfeits.

A typical dogfight is scheduled on a Saturday night in a warehouse, barn, vacant house, basement or a heavily wooded area. Promoters collect the guests from one or more meeting places. Caravans of several cars are led to a checkpoint, at which passengers are usually identified. No one gets any further unless they are recognized or vouched for by a known member of the inner circle of breeders or bettors. The group then proceeds to another checkpoint nearer the pit, where a stationary car waits to ensure that no one is following.

The actual "pit" site may not be decided until shortly before the convention. The "pit" itself is usually a twenty-foot square plywood arena, with a carpeted floor and two-and-a-half foot high sides. The "pit" can always be disassembled and taken elsewhere on short notice. Once inside the make-shift pit, no one can leave until the last match is over.

The promoter greets fanciers and collects the \$10 to \$50 admission fee. Women and children often attend these fights also. There is a one or two hour delay between arrival and the start of the first match, during which time the fanciers dine and socialize.

Prior to the first match the handlers toss a coin in the presence of the referee to determine washing order and corners. They wash and examine each other's dogs. Dogs are washed to ensure that no poisons are put on their bodies, and their teeth are checked to see if the owner has filed them even sharper. The dogs are then returned to their handlers wrapped in towels. Once in the pit, the referee commands "face your dogs," then "release," at which point the dogs rush together and immediately attempt to gain an advantageous hold. The handlers stay within the dog's field of vision and encourage them by voice, claps and whistles. If a dog hesitates or turns its head away, the dogs are parted. Either a handler or the referee can call a "turn." Handlers have 15 seconds to sponge away blood, saliva, and urine. The dog that committed the "turn" is released and must cross the pit and make contact within ten seconds, and the fight resumes. This is called "scratching." The fight continues until one of the dogs cannot or will not "scratch" to its opponent. Frequently a pit bull, carefully bred for aggressiveness, will continue to fight until it passes out or dies. Matches can last as long as two hours. If a handler senses that his dog is about to quit, he will usually pick the dog up, thereby conceding the match. If a dog finally refuses to continue fighting, this is called "curring out." If the dog "currs out" it is often shot or its head bashed in immediately. Handlers have been heard to remark, "There's no use feeding a dog that won't fight."

While fighting, the dogs do not bark or growl. Most of the noise during a match comes from the spectators and handlers, shouting bets and encouragement. Breeders and observers at a fight make as many side bets as they can. Betting is vigorous and the stakes are high. Fifties and hundreds are the common denominators in ring-side betting. The State, of course, realizes no revenue

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/585
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from this betting. Bettors are known by their first names only, and otherwise remain anonymous. At the conclusion of the evening three judges, who were chosen earlier, select the best fighting dogs of the night. They are awarded "Best in Show" and "Gamest" trophies.

WHY IS THIS CRUELTY TO ANIMALS?

Cock and dog fighting is cruelty in it's worst form, since the animals have no option as to whether they will participate, as is the case when human beings box or wrestle. Dogfighting causes acute suffering and pain to the dogs involved. American Pit Bull Terriers have extremely powerful jaw muscles as I've previously explained. They take hold with their front teeth, while they chew away with their rear teeth. This produces severe bruising, as well as deep and straight cuts resembling knife and puncture wounds. While fighting there is no barking or growling, Just relentless biting and chewing, and blood everywhere! The only sounds from the dogs in the pit are the crunching of bones and cartilage. A dog seldom participates in more than two or three matches because in about 49 percent of fights both dogs either die or are mortally wounded. Some enthusiasts claim that in 75 percent of fights at least one dog will die. Even dogs who win their fights often die days or weeks later from their injuries.

Cruelty to animals is also a part of training a pit bull. Training a fighting dog is a full-time endeavor. It is officially called "in keep." According to writer Edward Meadows, a columnist for a South Carolina newsweekly; "Proper training of a bull terrier for dogfighting requires two dozen live kittens a week. Each kitten is tied to a stick and dangled in front of the dog to whet his lust for killing. A good pit bull will quickly tear the kitten's front legs off and then its head. After perhaps eight weeks of kittens...the dog graduates to the killing of puppies and small dogs. Some participants deny such things take place in training a fighting dog, but one participant was heard to say that he thought this was as good a way as any other of getting rid of unwanted pets. Trainers look for these small animals through classified ads that offer puppies or kittens free, or they scout animal shelters which lack strong adoption policies and follow-up procedures. I assure you that all Montana shelters are alert to this possibility, and they deny any questionable adoptions.

A "Cat Mill" may also be used in training the fighting dog. It is a device with one or more rotating spokes radiating outward from a central axis planted in the ground. The dog is harnessed to one spoke and a small animal (dead or alive) is attached to a spoke in front of the dog as a lure.

Fighting dogs are also forced to run for hours on a treadmill to build up muscles, or they may have to swim in a tank for long periods. Prior to a fight, dogs are usually dehydrated to lesson blood loss and reduce their weight. This reduces their chances of recovering from a serious injury.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 031585
BILL NO. HB 155

NAME: Judith Fenton DATE: 3/15/85

ADDRESS: Blue Sky Heights #24, Clancy, MT 59634

PHONE: 933-5922

REPRESENTING WHOM? Federated Humane Societies of Mont.

APPEARING ON WHICH PROPOSAL: HB 155

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Montana needs to pass this legislation
to protect itself from any increase in professional
dogfighting activity. Passing this will cause
no added expense to the state at this
time.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03/15/85

BILL NO. HB 155

Federated Humane Societies of Montana



TESTIMONY ON HB 155
SENATE JUDICIARY COMMITTEE
MARCH 15, 1985

I am Judy Fenton. I live at Blue Sky Heights near Clancy, Montana. I am presently Secretary/Treasurer for the Federated Humane Societies of Montana. This organization represents 8 Humane Societies across the State, plus we work closely with the Montana Animal Control Association. I have been involved with humane work on a local and State level for almost seven years.

CONCERNS OTHER THAN ANIMAL CRUELTY

Dogfighting is a violent, in-humane, brutal activity that breeds violence. Young children are often encouraged to watch and participate which makes them insensitive to animal cruelty and promotes an enthusiasm for violence, which at the same time develops a lack of respect for the law.

Dogfighting is just another excuse for gambling. Other than the enjoyment of watching the animals maim and injure each other, thousands of dollars exchange hands when the handlers and the spectators wager huge sums on their favorite dogs. The large sums of money involved in this activity makes it attractive to organized crime.

Undercover investigators of HSUS and AHA, at great personal risk, have aided law enforcement agencies across the country by infiltrating the dogfighting underworld. They insist that sex, drugs, guns, and even murder are part of the dogfighting lifestyle. Cut-rate prostitutes work the darkened pit rooms. Firearms and other weapons are quite common because of the large sums of money present. The sale and use of illegal drugs is common.

Another concern is the pet animals that are stolen by dogfighters to be used in training their fighting dogs.

WHY SHOULD DOGFIGHTING BE A FELONY OFFENSE?

A small fine is no deterrent to the crime when so much money can be gained. Professional dogfighting is big business. The dogfighters merely calculate the possible misdemeanor fines that they may incur as a cost of doing business.

Because dogfighting involves so many people working to keep their "sport" a secret, an investigation and subsequent raid is a time-consuming thing for law enforcement officials. So much work cannot be justified if the violators will only be guilty of a minor misdemeanor. It is ironic that the most severe penalties doled out to those that have been arrested at dog-fights in the past, have been on gambling, drug, and weapons charges - not for the cruelty to animals. Law enforcement officials across the country have welcomed the up-
grading of the penalty for dogfighting.

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The cruelty involved should be punished by more than a slap on the hand. This cruelty is not a spur of the moment act. It is a pre-meditated act which is a serious offense against civilized society.

As more states make dogfighting a felony offense, the remaining states with low penalties will become havens for the dogfighters. Promoters gravitate to areas when this "sport" is a misdemeanor, since they know it is hardly worth the while of law enforcement folks to arrest them.

SOME STATES ALREADY HAVE FELONY LAWS

Dogfighting was declared illegal throughout most of Europe over a hundred years ago, and in 1976 the U.S. Federal Animal Welfare Act was amended to specifically outlaw dogfighting. In spite of this, the activity has grown to immense proportions, and is especially on the increase in America. Dogfighters move in an underground world more secretive than that of Klansmen or of drug dealers. They are so successful at being secretive that most Americans don't even know the activity still exists. Many of those who do know about it are under the impression that it is dying out. Nothing could be further from the truth. It is on the increase. In addition, amateurs and backyard breeders, who think it is macho, have added to its popularity. Not only is it growing here in the U.S., but also in Japan, Germany, Canada, England, and in parts of South America.

No states had felony provisions for dogfighting in their laws at the beginning of 1975. By 1981, seven states had enacted felony laws. Now the total is 29 states, since Virginia passed this law after the 1st of this year. This law has a good chance of passing soon in South Dakota and Wyoming. Many of these state laws apply to all types of animal fighting, including cockfighting. It is thus clear that the public has become incensed with this kind of animal cruelty and wants to see it eradicated once and for all.

Since 1975, Federal law has prohibited the interstate transportation of animals for fighting purposes and the use of the mail service to promote an animal fighting venture. Enforcement of this law has been practically nil. In 1980 HSUS filed suit against the United States Department of Agriculture and the U.S. Department of Justice in an effort to see this law enforced. I don't think a judgement has been made in this suit yet. Thus it has been left up to local law enforcement and animal welfare groups to try to investigate animal fights and to seek prosecutions.

HSUS investigators have information connecting dogfighters to every state in the U.S. Most of this data is gathered through a National Information Center on Pit Bulls. According to Mr. Philip Steward of the American Humane Association in Denver, dogfighting activity is moving Westward from the East and South. At present, they seem to be concentrating in Utah, because it is still only a misdemeanor, and because Utah is the home of Ralph Greenwood, publisher of a major dogfighters magazine. By passing this legislation, Montana will protect itself against a major increase of this activity. Although we are unable to show you definite proof today that organized dogfighting has actually taken place in Montana, those of us who do humane work have heard rumors of it for years.

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DATE 031585

RII NO HB 155

While attending a large dogshow here two years ago, I got into a conversation with a couple from Billings who were showing a Staffordshire Terrier. The conversation got around to fighting dogs, and the man told me that a fight had taken place here in Helena the night before. He claimed that three pit bulls had been tore up so bad that, after being examined by a vet, they were put-to-sleep. When my husband came over to join me, he mentioned that I work for a Humane Society. Needless to say, the guy clammed up quick. Those of us at the local Humane Society tried to find out if these animals had been treated by any of our vets. We even looked in their garbage dumpsters for the bodies, but we found nothing.

Even though it is illegal and there have been some "busts", on the whole there has been no concerted effort anywhere to clean up this activity. According to Mr. Frantz Dantzler, a HSUS investigator, "The best way to end dogfighting is through good effective state laws that are enforced." All states need to help eradicate this cruel practice, and the best way to do this is to make dogfighting a felony in each state. It has no place in a civilized society. It began with a culture that died out because of decadent behavior. It should end with a culture that respects life.

BEING A SPECTATOR SHOULD ALSO BE A FELONY OFFENSE

Since spectators do not merely "happen" upon one of these fights, but rather have to seek them out, they are willing participants in this criminal act and actually aid and abet such criminal action through their admission fees and the money they wager on the outcome of the fights. Without the money paid in admissions and the money wagered by the spectators, the fights would rarely take place.

THANK YOU

We thank all of you Senators for your sincere consideration of this matter.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 031585
BILL NO. HB 155

FACT SHEET FOR
LC 510 (House Bill 187)

The Department of Health and Environmental Sciences is proposing this bill for two reasons. First, the number and complexity of public water and wastewater systems in Montana has greatly increased in the last several years, as have the problems associated with such systems. In investigating such problems, DHES' expenses for travel, inspection, monitoring, and actual enforcement have been steadily increasing. These expenses are a one-way flow out of the executive branch budget. By recovering some of these costs, the state could reduce the drain of state resources.

Secondly, the Public Water Supply Act currently provides for injunctions and criminal penalties (\$50--\$500/day), but makes no provision for civil penalties. Since the DHES rarely pursues criminal actions and since injunctions do not require the defendant to pay out costs, owners and operators of these public water and wastewater systems (including cities, towns, subdivisions, and trailer courts) usually do not have a substantial financial incentive to come into compliance.

DHES has found that the cost recovery authority in the Water Quality Act (Title 75, Chapter 5, MCA) has provided a valuable incentive for individuals and companies to enter into prompt and effective compliance efforts. Similar authority in the Public Water Supply Act should greatly assist DHES in obtaining prompt and responsive cooperation from the owners of non-complying public water and wastewater systems. The final decision on DHES recovery of costs and expenses is left to the discretion of the court.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 03/5/85
BILL NO. HB 187

TESTIMONY OF DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
ON HB 187/revised

The reasons for the Department's request that this bill be passed are explained on the fact sheet. Our bill was designed simply to insert into the Safe Drinking Water Act the same cost recovery provision we've had in the Water Quality Act for 15 years. In essence, the bill will reimburse the general fund for part of the Department's expenses in bringing about compliance with the safe drinking water law and will provide an incentive to owners/operators of public water systems to comply with the law.

The House agreed with those purposes and passed the bill and there were no opponents to the bill. But, certain members of the House Judiciary Committee, apparently trying to protect public water system owners from capricious or poorly prepared suits by the Department, revised the bill in executive session to allow the court to award costs not only to the Department but also to the Defendant if the Defendant was the "prevailing party". We at the Department seriously question the need for the House amendment and we also fear that it's going to result in some confusion.

BAD FAITH CASES

First of all, there is no other public health law and we know

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 031585
BILL NO. HB 187

of no other specific law that subjects a state agency to this kind of jeopardy on costs. There is already a statute that allows a prevailing party to recover costs and reasonable attorneys' fees against the state if he can show that the State action was frivolous or conducted in bad faith (25-10-711). The Department of Health and all other agencies are already subject to that and that's why this amendment is unnecessary and that's why we urge this Committee to pass the bill out as originally introduced.

However, if this Committee somehow still sees a need to grant public water supply owners costs even where the State is acting in good faith, then this House amendment needs to be clarified.

ATTORNEYS' FEES

First, the amendment is ambiguous on the issue of attorneys' fees. It says the prevailing Defendant may get costs of defending the action and that sounds like attorneys' fees which the Department never intended to be included in this bill. If the amendment is to stay, it should be clarified and we recommend that attorneys' fees not be included as recoverable costs.

PREVAILING PARTY

Another problem we see is the language "prevailing party".

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 031585

BILL NO. HB187

Since most of our cases under the Safe Drinking Water Act are for equitable relief in the form of injunction, there may be questions about who is the prevailing party because sometimes, the Court may find a violation of law but may deny the specific relief the Department is requesting and order some other relief, or sometimes third parties are involved, and so on. So, we would recommend that, if the amendment is to stay, then the language should read that the Defendant may recover costs only if the Department fails to establish a violation.

CONCLUSION

The Department strongly urges elimination of the House amendment. However if this Committee determines it is somehow appropriate, then we urge adoption of the following substitute language.

The court may award the department its costs and expenses incurred in investigating and abating the violation or, if the department fails to establish a violation, may award the defendant its costs in defending against the alleged violation. In either case costs do not include attorneys' fees.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 03/5/85
BILL NO. HB 187

PROPOSED AMENDMENTS TO HOUSE BILL 187 (Third Reading--Blue):

1. Title, line 8.

Following: "~~SCIENCE~~"

Strike: "PREVAILING PARTY"

Insert: "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Title, line 9.

Following: "ABATE"

Strike: "IN INVESTIGATING AND ABATING"

Insert: "BY IT TO INVESTIGATE AND ABATE"

3. Title, lines 10 and 11.

Following: "ACT" on line 10

Strike: remainder of line 10 through "ACT" on line 11.

4. Page 1, line 25.

Following: "department"

Strike: "PREVAILING PARTY"

Insert: "department"

5. Page 2, line 2.

Following: "violation"

Strike: "OR IN DEFENDING AGAINST AN ALLEGED VIOLATION"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/15/85

BILL NO. HB 187

House Bill 681 was requested by the Montana Press Association and is similar to a bill I sponsored last session that was requested by the Montana Hospital Association. That bill passed the House but was killed in the Senate.

House Bill 681 is an amendment to the "Confidentiality of Health Care Information Act" passed in 1979. This act provides generally that confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative. The Act provides a number of exceptions to this general rule, but no exception is made for the release of information to the news media or law enforcement officials.

House Bill 681 provides that information about the general physical condition of a patient could be released to a law enforcement officer if the person had been injured on a public roadway or by the possible criminal act of another. The bill also provides for release to the news media information about the general physical condition of an injured person being treated in a health care facility.

In cases where the news media has already learned of the injury from the law officers involved, the matter has already become a public incident, and the news media will routinely inquire as to the patient's condition. The bill does not allow any details to be released about the injuries or the treatment, but limits the information to ^{the} ~~such~~ general terms as "satisfactory", "serious" or "fair," "poor," "critical," "guarded," ~~and~~. The bill would allow release of information that is of public interest without invading the privacy of the patient.

The bill was scheduled so quickly for a hearing that I don't believe everyone who is interested in it could be here today, but I do have other proponents.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 03/15/85

BILL NO. HB 681

TESTIMONY

From Patrick Sheehy, president
The Montana Society of Hospital Community Relations and Development

FOR INFORMATION CONTACT:

Patrick Sheehy
Manager of Public Relations
Northern Montana Hospital
P.O. Box 1231
Havre, MT 59501

265-2211 Ext. 596

My name is Patrick Sheehy. I am president of the Montana Society of Hospital Community Relations and Development. Our group consists almost entirely of people who have responsibility for our hospitals' relations with the communities they serve.

We represent hospitals in Butte, Helena, Bozeman, Missoula, Havre, Billings, Great Falls, Miles City, Libby, Glasgow, Dillon, Choteau, Wolf Point and Sidney.

The members of our small society are very concerned that a bill similar to House Bill 681 be approved in this legislative session. We are primarily concerned with section "i."

Under existing law, it is very difficult for members of my group to release even the most basic information on patients admitted to our hospitals following car accidents and other cases where law enforcement or fire officials are involved.

Journalists receive a report that an incident took place, say a car accident. They know an injured person or persons has been taken to the hospital. Therefore they have a question they logically must answer in order to complete their job of reporting what happened. They need to know the patient's condition.

That detail of information is a minute portion of the finished story but it answers a legitimate question the public will have if they read the report of the accident. What condition is the patient in. The journalist must get that detail of information for some official source. If we, as the hospital's representatives, refuse to give them that information, they will rely on other sources that are less accurate such as the ambulance service.

In a free society, we have the difficult task of striking a balance between the public's right to know and an individual's right to privacy. I have worked as a ~~reporter~~. And for the past two years, I have worked in

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 03/5/85

BILL NO. HB 681

hospital public relations. I know that people in my present profession are sensitive to the public's need for information. But we place a much higher priority on the patient's right to privacy. Still, we feel the public's interest and the interest of the patient will best be served by passage of this bill.

Hospital public relations practitioners are a tightly disciplined group. Virtually all of us report to the chief executive officer. We are trained to carefully comply with hospital policy.

I am impressed with the intensity with which hospitals protect information about patients. The entire medical records profession is dedicated to maintaining this privacy. There should be no question that hospitals would ever release information about a patient that the public should not have. And, in fact 50-16-311 as amended in HB681 is very specific. Hospitals are closely restricted by law as to what they can release.

This bill permits us to make three statements about a patient's condition: "Satisfactory", "Serious", or "Critical." This is more conservative in what it permits than any of the states contiguous to Montana based on a survey conducted by our group.

Over the past two years, the members of our group have been working closely together to develop language for a bill that would permit release of a basic condition report on patients coming into our hospitals in public record cases.

We've drafted proposals. All of our members have examined them and they have referred them to their administrators who have examined them. I am proud of the fact that we have engaged in a very democratic process. The members of our group have participated every step of the way.

This bill as approved by the House is not worded precisely as we would like but it gives us essentially what we need. Copies of this bill have been distributed to the members of the group and the comments I have received back are that this bill represents progress over what we have now.

We hope you will recommend passage of this measure to the Montana Senate.

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 031585

BILL NO. HB 681

STANDING COMMITTEE REPORT

March 15

19. 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 236

third reading copy (blue)
color

(Senator Crippen)

PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH UTILITY METER

HOUSE BILL

Respectfully report as follows: That

No. 236

be amended as follows:

1. Page 2, line 20.

Following: "utility."

Insert: "Collection under subsection (2) precludes collection under this subsection."

2. Page 2, line 25.

Following: "utility."

Insert: "Collection under subsection (1) precludes collection under this subsection."

3. Page 3, line 6.

Following: "court"

Strike: "shall"

Insert: "may"

Following: "for"

Insert: "up to"

4. Page 3, line 8.

Following: "provided"

Insert: "and may award to the utility its costs, including reasonable attorney fees, incurred in maintaining the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary to prove the utility's case"

AND AS AMENDED

BE CONCURRED IN

~~SENATOR~~

~~HOUSE~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 15 19 65

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE BILL No. 371
third reading copy (blue)
color
(Senator Farrell)

REPEAL 61-3-104, MCA - SECURITY INTEREST ON MOTOR VEHICLE PARTS

Respectfully report as follows: That HOUSE BILL No. 371

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 15

19.85

MR. PRESIDENT

We, your committee on..... JUDICIARY

having had under consideration..... HOUSE BILL No. 706

third reading copy (blue)
color

(Senator Pinsonneault)

CLARIFY THE ARSON LAW

Respectfully report as follows: That..... HOUSE BILL No. 706

be amended as follows:

Page 2, line 4.

Following: "structure"

Strike: remainder of line 4 through "property" on line 5

AND AS AMENDED

BE CONCURRED IN

~~DO NOT PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 15

19. 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 301

third reading copy (blue)
color

(Senator Kolstad)

ALLOCATING YOUTH COURT COSTS AMONG THE COUNTIES BASED ON COST EXPERIENCE

Respectfully report as follows: That HOUSE BILL No. 301

be amended as follows:

Page 3, line 16.

Following: "3."

Strike: "Application in 1985."

Insert: "Applicability date. This act is applicable to fiscal years following June 30, 1985."

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 15 19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 831

third reading copy (blue)
color

(Senator Mazurek)

REDEFINES THE OFFENSE OF INTIMIDATION TO CONFORM WITH MURTZ V. RISLEY

HOUSE BILL

Respectfully report as follows: That

No. 831

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 19, 1985

The fifty-second meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 19, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 613: Representative Tom Hannah, sponsor of HB 613, testified this bill was caused by a recent supreme court decision that took the balanced budget amendment off the November ballot. The timing of that event concerned him. He feels the legislature should address that so we can deal with the initiative process in a timely manner. This bill says any ruling needs to happen within a certain timeframe. or after the election. It created real havoc because ballots had to be reprinted and absentee ballots were late. The bill deals with just the certification of printing.

PROPOSERS: Larry Akey, Chief Deputy to the Secretary of State, testified this bill was requested by his office. This gives local election officers a green light to proceed with the election process at the time the ballot is certified. What we are trying to do is give the local election officers a green light to proceed with printing and distribution of voter distribution pamphlets. It does not prohibit anyone from challenging a ballot issue in the courts. It is certified between mid-July and mid-September. It does not prohibit the court from hearing a challenge after ballot certification. What they are asking is that there be some balance of the administration process with the citizens' right to challenge that process in court. Would HB 613 stand up to a constitutional test? What our system of government has is a system of checks and balances. The check the court has on the legislature is to declare laws unconstitutional. The check the legislature has is declaring jurisdictional limits. Mark Mackin, on behalf of the Citizens Legislative Coalition, testified this bill would require them to bring any challenges within a timely manner.

OPPOSERS: Robert Anderson, lobbyist from Montana Common Cause, presented written testimony in opposition to the bill (Exhibit 1). Don Judge, representing Montana State AFL-CIO, opposed the bill because it is improper to limit the court to applying improper remedies. He had a question about the way the bill was drafted. What if a ballot issue is an issue that is not clear to the voters? There has been a certification

of ballot language and someone decides it is inappropriate and files a case and the court doesn't make a determination prior to the time the printers begin. Can the law stop the printers from printing? What's the court's jurisdiction? If the court determines that the language is clearly inappropriate, does this mean the court can ask for that language to be changed and reprinted? Is that fair to those that are pushing for the initiative and did not like what the court did? He thinks it is a bad bill that has come about because of one incident, and he thinks it will work against both sides.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mr. Anderson why you couldn't ask someone to act in a timely manner. He replied it would seem reasonable to request that. Mr. Judge stated John Motl testified in the House that this happened at about the same time as the California courts issued a decision, which arguments were used in the Montana court case.

CLOSING STATEMENT: Representative Hannah stated it is important that you try not to confuse what this bill is trying to do with your opposition to the initiative. They were not here because they still have strong opposition to the initiative. The people he is familiar with and works with are becoming disenfranchised with the initiative process. It is losing its credibility in the state of Montana. This is a single problem, and it can be solved without any great harm to anyone.

Hearing on HB 613 was closed.

CONSIDERATION OF HB 846: Representative Ted Schye, sponsor of HB 846, testified this bill deals with the Milk River and some of the problems on the Milk River with the shortage of water. Under present law, they cannot get water commissioners unless it is adjudicated. There was no way to change the water laws so they could get water commissioners. This puts the Milk River on the high priority list for a temporary preliminary decree. Northeast Montana has been in extreme draught. Their irrigation districts were shut off on June 8, 1984. They have tried to do a lot of conservation things. They are trying to conserve water on their own irrigation districts. These are some of the oldest irrigation districts in the state. One of the biggest problems up there is no one can shut an illegal pumper off. Tensions are very high up there. This is by the request of those eight irrigation districts so they can get these water marshals in there and have someone that has the authority to regulate illegal usage.

PROPONENTS: Senator Swede Hammond stated his district includes the eight irrigation districts with the exception of those in Blaine County. Eight out of the last 12 years the Milk River Basin has been short of water. Last session they got a bill through which gave the Department

of Natural Resources and Conservation the right to deny pumping privileges on the river, but they have too many pumpers there now. They need this to keep some security and peace there. Ted Doney, representing the Montana Water Development Association, supported the bill. Why is the Milk River the most important river to be adjudicated? It is the most hotly contested river in the state on water rights. Parts are adjudicated, but the entire river needs to be. The water marketing committee recommended the Missouri River Basin have the top priority, and this is part of that basin.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Galt addressed Representative Schye and stated apparently the Milk River has never been adjudicated. He asked him to clarify if it must be adjudicated before they get the water marshals. Representative Schye stated the original intent was to try to change the law to say they didn't have to have the adjudication before they got the marshals. Senator Galt stated a bill passed the Senate which would change the dates. Even if we pass this legislation, you are changing the date on Section 85-2-702, MCA, so you would still be pushed two years or six months down the road. Representative Schye responded right now Milk River is not even on the schedule. They realize it will not take place this summer or even next summer, but something has to be done. Senator Galt asked what a temporary preliminary decree was. Mr. Doney replied it is a concoction of Judge Lessley's. He wants a decree to come out that eliminates the Indian water rights and the federal water rights. This temporary decree adjudicates all of the water rights except the Indian and federal rights and then you come out with a preliminary decree when you have those. Senator Pinsoneault asked if this bill had Judge Lessley's blessings. Representative Schye responded yes. Senator Mazurek asked why they proposed this in the form of a bill rather than a resolution. Mr. Doney replied a resolution could have done it, but it is not binding on the water courts. This bill gives them some legal direction in this situation. He didn't oppose this concept. Senator Mazurek asked if this were the first statute where we made reference to the temporary preliminary decree. Mr. Doney replied yes, although the water marketing committee bill also refers to it.

CLOSING STATEMENT: Representative Schye stated this is an important bill to those people that live along that river. We need to get this process done as fast as we can.

Hearing on HB 846 was closed.

CONSIDERATION OF HB 713: Representative Norm Wallin, sponsor of HB 713, testified volunteer fire departments need to protect themselves. He

testified this bill arose out of a situation where a volunteer fire department responded to a call and found out the home was not owned by a member of the district. They reeled in their hoses and let the home burn in order to protect themselves. These people fighting the fires are volunteers and they don't get paid. The agreement is they only fight those fires for members who belong.

PROPOSERS: Lyle Nagel, representing the Montana State Volunteer Firemen's Association, testified a lot of firemen wear two hats. They are also emergency medical personnel. If they respond as EMTs, they are covered, but if they respond as a volunteer fireman, they are not. They support this bill (see witness sheet attached as Exhibit 2).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 713 was closed.

ACTION ON HB 713: Senator Brown moved HB 713 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 517: Representative Stella Jean Hansen, sponsor of HB 517, testified this is a simple bill that allows for a charge in addition to a payment a payor makes when they pay a support payment. What that does is just cover the costs of the handling fee. They ask that it be paid in addition to the payment so it does not come out of the money the person gets. There are many counties who hire someone full time to handle these support payments. It does cost time and money.

PROPOSERS: Clara Gilreath, Lewis and Clark County Clerk of Court, testified she is in favor of the bill, but \$2 is not enough. In her county, a real conservative estimate of costs for handling this is \$20,000 a year. If they got \$2 a payment, they would get back \$12,000. If they received \$3 per payment, it would get them back \$18,000, which would be closer to the actual expenses. She felt \$3 would be a better figure than \$2. Gordon Morris, representing the Montana Association of Counties, testified these are administrative duties performed by the clerk of court on a routine basis. He conducted a survey to determine how many child support payments are processed each month by the counties. The results of his survey are attached as Exhibit 3. He does not think it is unreasonable to suppose the non-custodial parent could be assessed the processing costs. It was not intended the property tax would continue to subsidize the distribution of child support payments. The

non-custodial parent submits cash. The clerk gives a receipt. She puts that in her books. She writes a warrant. They put that into an envelope and mail it to the custodial parent. Washington charges \$5 and Idaho charges \$7.50.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if what we are really talking about is it must be paid in addition to the payment. Representative Hansen responded yes, that was the idea. Senator Towe stated the information on Exhibit 3 indicates Lewis and Clark County is keeping track of 509 payments. He asked why that costs \$20,000. Mrs. Gilreath stated a full-time person handles this. For each payment and disbursement, a real conservative estimate shows it costs 60¢ for each payment and disbursement. There are balance sheets and bookkeeping duties and making the deposits. Her figure of \$20,000 includes one person plus the supplies and the cost of postage. That figure does not include the cost of the check protector or its maintenance. Senator Shaw asked why so many go through the clerk of court. Mrs. Gilreath replied the judge orders this. Senator Mazurek asked how the bulk of the payments came to their office--through the mail or personally. Mrs. Gilreath replied half and half. Senator Mazurek asked how they proposed to handle this. What if someone refuses to pay it? Would they send out a notice? Mrs. Gilreath responded it wouldn't be retroactive. It would only be for court orders signed after the bill went into effect. Senator Mazurek asked if it were their intention no existing child support payment would be affected. Representative Hansen replied yes. Senator Towe asked how they would handle the situation where the payment came in and the fee weren't there. Mrs. Gilreath responded notice would have to go out to all of the people who do pay, then if they submit it without the fee, they would reject it. Senator Towe asked what they did now. Mrs. Gilreath replied they accept it. Senator Towe asked what their intention was if the payment were \$2 short. Would the clerk take the first \$2 and send the balance to the individual or should it be the other way around? Representative Hansen replied it was their intent that the recipient not have to pay any of it. Those cases would have to be handled at the discretion of the clerk unless the committee wanted to write it into the bill. Mrs. Gilreath replied they wouldn't want to take money out of the mouths of babes. Representative Hansen stated she wouldn't have a problem with an enforcement procedure, but they had not envisioned what that would be.

CLOSING STATEMENT: Representative Hansen encouraged the committee to pass the bill with at least the \$2 or a higher figure.

Hearing on HB 517 was closed.

ACTION ON HB 846: Senator Galt stated even if we pass the bill, it will be July 1987 before it helps them out. Mr. Petesch stated that's the problem with this temporary preliminary decree; it's outside the compact commission. It is not defined in the statute, but because Judge Lessley created it, he is the water judge, and he knows what it means. Senator Yellowtail commented it seems a little useless to issue a preliminary temporary something or other when the judge will have to go back and redo it. Senator Mazurek pointed out all we are doing is giving some legislative sanction to this. Senator Galt moved HB 846 be recommended **BE CONCURRED IN**. Senator Yellowtail stated there is already a section of law that deals with the Milk River. Senator Pinsoneault replied this allows the judge to go ahead. The motion carried unanimously.

CONSIDERATION OF HB 426: Representative Gary Spaeth, sponsor of HB 426, stated this bill was introduced at the request of the Public Service Commission and addresses a problem that arises when there is an appeal from an administrative agency. If there is a request for a stay, it establishes a procedure for getting an appeal or a stay upon notice to the affected parties and how a stay may be issued. It does not address itself to a permanent injunction. It was the preferable way to go as it was originally drafted. Because of the problems they ran into in the House, there has been some controversy whether we should ask this committee to go back to the original language. It addresses how to get a preliminary stay. We have not addressed how to get a permanent injunction.

PROPOSERS: Opal Winebrenner, representing the Public Service Commission, testified they requested the bill because they experienced a problem where one agency's final decisions were stayed pending appeal without notice. They tried to provide for specific criteria and to provide for a procedure for that stay to be issued upon. The way it has been amended provides an agency decision can be stayed if notice and an opportunity for hearing are granted by the agency itself or the court. They would like an amendment to Section 27-19-316, MCA, to remove subsection 4 and have the entire statute apply. Karla Gray, representing The Montana Power Company, testified they support this bill for the reasons that have been explained. The bill provides some standard procedural fairness elements. It provides them in an even-handed fashion so everyone will be treated the same. Gene Phillips, representing the Pacific Power and Light Company, testified they support the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked John Lahr, of The Montana Power Company, if he had anything to say about this bill. Mr. Lahr responded he felt everything had been wonderfully and well said.

Senator Shaw asked if the committee were to take the House amendments off, would they kill the bill. Representative Spaeth replied he was not sure. He moved the House reconsider this bill on second reading to come up with the amendments presently before the Senate committee.

CLOSING STATEMENT: Representative Spaeth supported the amendment. He commented he would prefer the bill in its original state, but this is the best we can do and it does address a very serious problem.

Hearing on HB 426 was closed.

CONSIDERATION OF HB 714: Representative Gary Spaeth, sponsor of HB 714, testified this bill is a response to the Karla White case. As a result of legislation you passed, page 3 says \$300,000 for each claimant and \$1 million for each occurrence. Each claimant has been changed to each claim. If there were one injury, it would be \$300,000; if two injuries, \$600,000. That was the thinking at that time. Through creative thinking by members of the bar, that one injury was expanded to other people in the family who are affected, so they are trying to double and treble that so we eliminate the \$300,000 cap and the only cap we have is \$1 million. Is the \$300,000 or \$1 million a reasonable cap? Those caps affect local governments, school districts, etc. We don't know what those impacts will be, but we should take a look at it and study it. Before we change those caps, we have to tighten those caps up.

PROPOSERS: Mike Young, Administrator for the Department of Administration, testified they defend all of the claims against the state of Montana for bodily injury. They are trying to plug a loophole in this cap. They believe that has been the legislature's intent. This issue has been raised in about six district court cases. No judge has ruled on it either at the district court level or at the supreme court level. The case of Dawson v. Hill and Hill Trucking created another right--If a member of the immediate family witnesses another family member's being killed, they now have a right to a claim. If we are going to have these caps, let's have meaningful claims; and if not, let's get rid of them. Chip Erdmann, representing the Montana School Board Association, felt this bill clarified what the original intent of the law is and clarified what the exposure was for the insurance rates.

OPPOSERS: Karl Englund, representing the Montana Trial Lawyers Association, stated he does not know the intent of the legislature last session, so he cannot speak to the issue of this bill's doing what the legislature thought last time, but he can speak to the issue of one limit for one injury when you can have multiple parties that are affected by that injury. The \$300,000 limit could potentially just pay for the hospitalization and not compensate for loss of earnings. We are not saying you left a little loophole and we want to drive a Mack truck

through it. However, this law greatly affects the bread winner of a family. They feel the statute is fine the way it is.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Spaeth stated it was the intent of the legislature to have \$300,000 per claim, not per claimant. He questioned some of our whole realm of sovereign immunity, but we should not overturn it without knowing some of its ramifications.

Hearing on HB 714 was closed.

ACTION ON HB 426: Senator Blaylock moved HB 426 be amended as follows:

Page 3, line 8.
Following: "27-19-316"
Strike: "(4)"

The motion carried unanimously. Senator Blaylock moved HB 426 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 200: Proposed amendments were distributed to the committee (Exhibit 4). Mr. Petesch explained what these amendments do is repeal the termination date which is section 1 in the bill and then the other changes are you go to the effective date section and say section 2 (the repealer) would be effective on passage and approval, and section 1 (the new number for overcrowding) would then be effective 30 days after the occupancy. Senator Towe commented that is a cleaner way of doing it. Senator Mazurek stated we are saying what the bill currently says in a cleaner way. Senator Towe explained we were amending a section and then repealing it. He approved. Senator Towe moved the amendments be adopted. The motion carried unanimously. Senator Blaylock moved HB 200 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 44: Senator Towe moved HB 44 be amended (as indicated by the standing committee report). The motion carried unanimously. Senator Blaylock moved HB 44 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

FURTHER CONSIDERATION OF HB 310: Senator Crippen presented proposed amendments to the committee (Exhibit 5) and moved their adoption. This just provides another forum so the person involved can show he cannot pay the costs. It would not do any good to allow any relief if he cannot pay the costs. Mr. Petesch pointed out you need to make some amendments to page 7, lines 6-8, because there is still reference to justice and municipal courts. The motion to amend carried unanimously. Senator Shaw moved allowing the justice of the peace to file a restraining

order be reinserted on page 7, line 12, through page 8, line 6. Mr. Petesch pointed out you also need to reinsert the stricken language on page 8, lines 8-9. Senator Towe asked what his reasoning was. Just because there is no judge in Wibaux doesn't mean you can't get one. The telephone doesn't take any longer. Senator Shaw replied if you were asking for a restraining order, you wouldn't need to take the time to go after a district judge. You can get the justice of the peace out of bed at those times. Senator Towe suggested stating it must be a municipal judge or justice of the peace with a law degree. Senator Shaw replied no. Senator Crippen asked if that situation did happen, what's the right of the person who the restraining order is against? The district judge can come in and overturn the restraining order. Can't a district court overturn any restraining order? Senator Towe replied there is no limitation on it or you have to do it ex parte on a justice of the peace's issuing a temporary restraining order (TRO). Senator Mazurek stated TROs should only be granted in the rarest of circumstances because you are letting one party to a dispute go to court and get an order against another party who has never said a word. In fact, district judges should only do it in rarest of circumstances. We have only recently allowed them in marital disputes. Senator Yellowtail pointed out the concern was for matters of immediacy in issues of domestic violence. They feel a strong need for ready access to TROs. They need quick access. Senator Towe commented Senator Yellowtail is correct, and there are occasions when you need quick and immediate action, but there are a lot of others when people think they need quick action, and they do not at all. If you violate that restraining order, it is a criminal offense, and you can be put in jail. It doesn't matter now whether it is correct; it is whether or not you violated it. He doesn't trust district judges or federal judges with TROs, but, there is more legal understanding. There just might be another side to the story. Senator Daniels stated he thinks Senator Yellowtail has made the remark that they need it immediately. Their judge is not available all of the time. That is the only good thing about this bill is that a justice of the peace can issue a TRC. A judge with common sense is just as capable of making a TRO as a judge with a degree. The immediate thing is the thing he is concerned about. Senator Pinsoneault stated he thinks the parameters need to be defined, and it is in the title of the bill. The justice of the peace knows the participants better than the judge. The bill has merit, and it will accomplish what it is intended to do. Senator Yellowtail stated there is potential for error and abuse, but if we were to error, let's error in the direction of providing protection. Senator Crippen agreed. He asked if we could draft another bill that a district judge may lift a TRO issued by a justice of the peace. Senator Towe commented if you are going to allow the justices of the peace and municipal court justices access to restraining orders, they should be governed by the limitations of a district judge and appealed to the district judge. Senator Mazurek stated you need the same protections to

apply in the justice court as in the district court. Senator Blaylock stated he agrees with Senator Towe that the caveat is a powerful tool. He felt Mr. Petesch should make them go through the same procedure. Mr. Petesch stated he felt the committee should look at subsections 3 and 4 on page 8 separately as they are not directly related to the justice courts. Senator Towe thought we better keep it to the county where the physical abuse was committed. Mr. Petesch pointed out both of those address the fleeing spouse issue. Senator Towe asked Mr. Petesch to carefully go through this bill to be sure this is very clearly limited to the physical abuse situation and that the justice of the peace does not have the opportunity to get into ordering the child support payments.

ACTION ON HB 681: Representative Hannah stated his son was involved in an accident over transmittal break. In the trauma of that, the press were monitoring the reports. His brother came running in after being to several hospitals because he heard his nephew had been struck by a car. He also heard that his son had serious internal injuries and was seriously hurt. He didn't think it was appropriate for his brother to find out via the radio erroneous information about his sone. It wouldn't make any difference to the people's right to know to delay that information by a couple hours. Because we are public officials, it got more press than it had to have. It was his view he didn't like the bill when it came through. If we are going to give this information out, it is up to you. That isn't information that the people have to have. Even though we are talking about the standards of critical, serious, etc., there are circumstances where the wrong information is going out. Senator Shaw stated it wouldn't make any difference what we have done outside you would have the opportunity to sue the newspaper reporter. You can't stop them. Representative Hannah responded that is true. Senator Crippen stated if this law where in effect, couldn't the reverse be true. The hospital could release information the newspaper would contact the hospital and get the information rather than relying on word of mouth? Representative Hannah stated he thinks it is an area of abuse and is not sure this will solve it. He thinks it is an area that needs more review. Senator Towe moved HB 681 be amended as follows:

Page 3, line 13.

Following: "FACILITY"

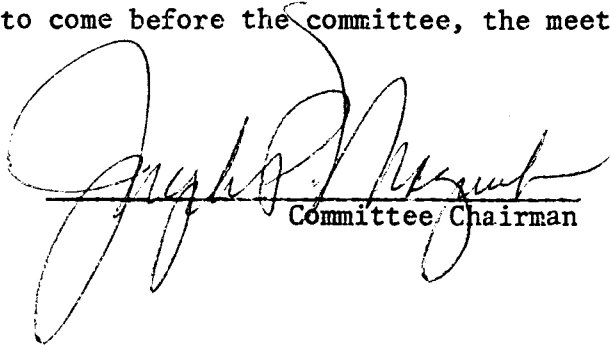
Insert: ", provided the existence of the hospitalization is publicly known, or involves a public figure and release of the information would not violate his right of privacy"

Senator Towe commented this language was reviewed by both the hospitals and Mike Meloy, and these are words they are used to dealing with. In addition to having to allow for the fact when the governor checks into the hospital, that is a newsworthy event and you cannot eliminate that

Senate Judiciary Committee
Minutes of the Meeting
March 19, 1985
Page 11

or you run into constitutional problems. Senator Mazurek stated the only thing about that is we are essentially creating an exception to the right of privacy. Senator Towe responded the right of privacy is compelling unless there is a state interest. We don't want to say just because he is a public figure in all events the hospitalization is a public matter. There may be instances where his right of privacy may override this. Senator Blaylock felt that threw quite a burden on the hospital. Senator Towe commented it is better than they have now. Senator Crippen asked what information they could give out. Senator Towe replied it was limited to satisfactory, serious, or critical, but that confirms he is there and confirms his existence. Under those circumstances, you may want to say that is a matter of a right of privacy. The motion to amend carried unanimously. Senator Yellowtail asked if it would be reasonable to address a timeframe or a delay. Senator Towe responded the right of privacy does address that. Senator Towe moved HB 681 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Crippen, Daniels, and Mazurek voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 12:10 p.m.


Committee Chairman

Mar 19, 1985

VISITORS' REGISTER.

HB 426, 517, 613, 713, 714, 846

[illegible]

(Please leave prepared statement with Secretary)

TESTIMONY BEFORE THE JUDICIARY COMMITTEE
OF THE MONTANA SENATE

March 19, 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/19/85
BILL NO. HB 613

Good morning, Mr. Chairman and members of the committee. For the record my name is Robert Anderson and I am a lobbyist for Montana Common Cause. I am here today to speak in opposition to HB613.

Montana Common Cause believes that the passage of this bill would cause harm to an initiative process that is presently working very well. We feel that its introduction was motivated partly as a backlash after the removal of a clearly unconstitutional item from the November 1984 ballot; and partly out of a desire for clear administrative control by those who prepare, and last fall had to change, those ballots.

HB613 was precipitated by the controversy surrounding CI-23, an initiative which the state Supreme Court ruled last fall was unconstitutional on its face and ordered removed from the ballot. Montana Common Cause was a party to that action. Our Board of Directors, after long discussion, voted unanimously to get involved in the suit because, as one of the groups which has always championed an open avenue for citizen involvement in government through the initiative process, we recognize that every process can be weakened if stretched beyond its proper limitations. Although very few limits currently exist regarding what citizens can and cannot do via the initiative process in this state, one very definite restriction is that any action taken through this process must be

unconstitutional. CI-23 was removed as an improper or unconstitutional use of the initiative process.

One of the things that the U.S. Constitution says must be accomplished only by legislative action is ratification of an amendment to that Constitution. In the case of Montana's action on the call for a constitutional convention, this meant passage of a joint resolution by this legislature. The backers of CI-23 sought to get around this restriction, however, by proposing an initiative that would have forced the state legislature to stay in session this year until calling for a constitutional convention for the purpose of balancing the federal budget. In other words, what the backers of CI-23 could not do directly they proposed to force the legislature to do. Although expressly warned by the Legislative Counsel about the probable illegality of their initiative, they proposed to put before the voters of Montana a law that the U.S. Constitution says must be passed by the legislature. Montana Common Cause viewed this persistence as a deliberate misuse of the initiative process that could only have damaged the process in the long run. With that in mind, Common Cause saw the complete removal of the initiative from the ballot as a necessary way to protect the initiative process.

In closing, Montana Common Cause believes approving a change in Montana's initiative process because of one instance in which an item was removed from the ballot to the dismay of its supporters and the discomfort of administrators is simply unreasonable. We believe Montanans are protective of their initiative process and wish that changes in the process only take place when a clear need has been established. We submit that there is not such need in this case. I hope you will kill this measure.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/9/85
BILL NO. HB 613

BOZEMAN DAILY CHRONICLE

Bozeman, MT 59715

(D-2.403. S-10.278)

SEP 2 1984

Support initiative process

96 Montanans should speak up to protect a good system — the initiative process.

Common Cause, a public interest lobbying group, expects challenges to the initiative process in the coming legislative session. Common Cause is arming to defend the process.

Opponents of the initiative process think they have Common Cause in a weak position because the group successfully opposed placing the balanced budget amendment on the November ballot in initiative form. But Common Cause is touring the state reaffirming its support for the process.

The initiative process has been used well and responsibly in Montana. In just the most recent election, voters were given a fair choice to decontrol milk and to recognize the practice of denturism. In both cases, the issues were decided after a fair and vigorous campaign.

The initiative process is a vital part of democracy in this state. The process allows citizens to petition to have a proposed law placed on the ballot for voters to decide. It is the closest thing we have to pure democracy.

The initiative process should not be weakened.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 031985

BILL NO. HB 613

BILLINGS GAZETTE
Billings, MT 59103
(D-59,401, S-61,414)

NOV 30 1982
SUPERIOR CLIPPING SERVICE
SUPERIOR, MONT. 59872

Simple label can't make initiative constitutional

91
HELENA (AP) — Labeling a document a constitutional amendment does not make it one, the Montana Supreme Court said Wednesday in formal opinion explaining its reasons for having tossed Constitutional Initiative 23 off the Nov. 6 ballot.

The court took emergency action on Oct. 1 declaring the initiative calling for balanced federal budgets unconstitutional and ordering it expunged from the statewide ballot. The U.S. Supreme Court refused to interfere with that ruling on Oct. 10.

The initiative proposed a state constitutional amendment that would have directed the 1985 Legislature to petition Congress for a national constitutional convention to consider a federal constitutional amendment requiring balanced national budgets.

In Wednesday's opinion, the court expanded on the reasoning it gave briefly in its earlier action.

The court said the initiative was unconstitutional for two reasons.

The court said that, while the initiative claimed to be a constitutional amendment, it was nothing but a legislative resolution and that the state Constitution does not permit the people to enact legislative resolutions.

"The only attribute that the balanced budget initiative shares with a bona fide constitutional amendment initiative is its form and label," Chief Justice Frank Haswell said for the court.

"The subject matter of the initiative reveals its true nature Its import and purpose is to create (a) resolution."

The court said it recognizes that the power of the people to act by initiative is broad in Montana.

"However, we cannot fail to recognize the independent legislative power vested in the Legislature," Haswell said.

He said the initiative sought to accomplish its objectives by threatening lawmakers with "confinement" and no pay. (It required the Legislature to remain in session until it adopted the convention-call resolution.)

"Such coercion is repugnant to the basic tenets of our representative form of government guaranteed by the Montana Constitution," Haswell said.

The fact that Americans are governed through a representative form of government was also the key to the second reason the court invalidated the initiative.

The court said the U.S. Constitution allows only deliberative legislative assemblies to take the requisite actions leading to federal constitutional amendments, including petitioning and ratification.

It noted that the U.S. Supreme Court had struck down popular-vote involvements in the 18th and 19th Amendments establishing prohibition and giving women the right to vote.

"The deliberative process must be unfettered by any limitations imposed by the people of the state," the court said.

"Initiative No. 23 is facially unconstitutional for precisely this reason. The measure attempts to direct and orchestrate the legislative application process in contravention of the plain language of Article 5 (of the U.S. Constitution)," the court said.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03/985

BILL NO. HB 613

NAME Lyle P. Nagel BILL NO. 713
ADDRESS Simms Mt. DATE 3-19-85
WHOM DO YOU REPRESENT Mt. State Vol Firemen's Assn
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Some fire fighters are also emergency medical personnel. When responding on a medical call that person is covered under the Good Samaritan Act. If that person is responding to the same incident as a firefighter no coverage is afforded.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 031985
BILL NO. HB 713

**MONTANA
ASSOCIATION OF
COUNTIES**

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

HOUSE BILL 517

CHILD SUPPORT HANDLING FEE

SENATE JUDICIARY COMMITTEE

March 19, 1985

COUNTY	# OF MONTHLY SUPPORT PAYMENTS (ESTIMATE)
BLAINE	11
CASCADE	750
DANIELS	20
DAWSON	30
GALLATIN	350
JEFFERSON	40
MADISON	30
MISSOULA	800
PHILLIPS	15
ROSEBUD	125
SHERIDAN	20
STILLWATER	25
TREASURE	1
YELLOWSTONE	375
LEWIS AND CLARK	509

MACo

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/19/85

BILL NO. HB 517

PROPOSED AMENDMENTS TO HB 200:

1. Title, lines 5 and 6.

Following: "TO" on line 5

Strike: remainder of line 5 through "TO" on line 6

2. Title, lines 13 and 14.

Following: "REPEALING"

Strike: remainder of line 13 through line 14 in its entirety

3. Page 1, lines 19 through 25.

Strike: section 1 in its entirety

Renumber: subsequent sections

4. Page 3, line 23.

Following: Line 22

Strike: "1"

Insert: "2"

5. Page 3, line 24.

Following: "(2)"

Strike: "SECTIONS 2 AND 3 ARE"

Insert: "section 1 is"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 03/9/85
BILL NO. HB 200

PROPOSED AMENDMENTS - HB 310

1. Page 7, line 4.

Following: "40-4-106"

Strike: "."

Insert: ", and uniform sample affidavit and orders of inability to pay filing fees or other costs."

2. Page 7, line 5.

Following: "restraining order"

Insert: "and the inability to pay filing fees order"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 03/985
BILL NO. HB 310

STANDING COMMITTEE REPORT

Page 1 of 2

March 19

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 44

third

reading copy (

blue

color

(Senator Pinsonesult)

REQUIRE PAYMENT OF VICTIM COUNSELING BY OFFENDER; RAPE OR INCEST

HOUSE BILL

Respectfully report as follows: That

No. 44

be amended as follows:

1. Title, line 4.

Following: "ACT"

Strike: "DIRECTING"

Insert: "AUTHORIZING"

2. Title, line 6.

Following: "DEPENDANT"

Insert: "WHO IS FINANCIALLY ABLE AND WHO IS"

3. Page 2, line 10.

Following: "court"

Strike: "shall"

Insert: "may"

4. Page 2, line 11.

Following: "offender"

Insert: ", if able."

Following: "victim's"

Insert: "reasonable"

XXXXXX

XXXXXXXXXX

CONTINUED

Senator Joe Mazurek

Chairman.

Page 2 of 2

HOUSE BILL NO. 44

5. Page 4, line 1.

Following: "court"

Strike: "shall"

Insert: "may"

6. Page 4, line 2.

Following: line 1

Insert: ", if able,"

Following: "victim's"

Insert: "reasonable"

AND AS AMENDED

BE CONCURRED IN

.....
Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

March 19

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 200

third reading copy (blue)
color

(Senator Crippen)

EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON OVERCROWDING

Respectfully report as follows: That HOUSE BILL No. 200

be amended as follows:

1. Title, lines 5 and 6.
Following: "TO" on line 5
Strike: remainder of line 5 through "TO" on line 6
2. Title, lines 13 and 14.
Following: "REPEALING" on line 13
Strike: remainder of line 13 through line 14
3. Page 1, lines 19 through 25.
Strike: section 1 in its entirety
Remember: subsequent sections
4. Page 3, line 23.
Following: line 22
Strike: "1 IS"
Insert: "2 and this section are"
5. Page 3, line 24.
Following: "(2)"
Strike: "SECTIONS 2 AND 3 ARE"
Insert: "Section 1 is"

AND AS AMENDED

BE CONCURRED IN

~~EXHIBIT~~

~~EXHIBIT~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

1985

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 426

third reading copy (blue)
color

(Senator Mazurek)

REQUIRE PRELIMINARY INJUNCTION SHOWING FOR COURT TO STAY AGENCY DECISION

Respectfully report as follows: That

HOUSE BILL

No. 426

be amended as follows:

Page 3, line 8.

Following: "27-19-516"

Strike: "(4)"

AND AS AMENDED

BE CONCURRED IN

~~RECEIVED~~

~~RECORDED~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 681

third reading copy (blue)
color

(Senator Towe)

ALLOW RELEASE OF CONFIDENTIAL HEALTH INFORMATION TO MEDIA & LAW ENFORCEMENT

Respectfully report as follows: That HOUSE BILL No. 681

be amended as follows:

Page 3, line 13.

Following: "FACILITY"

Insert: ", provided the existence of the hospitalization is publicly known, or involves a public figure and release of the information would not violate his right of privacy"

AND AS AMENDED

BE CONCURRED IN

END PAGE

END PAGE

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 713

third reading copy (blue)

color

(Senator Blaylock)

INCLUDE VOLUNTEER FIREFIGHTERS IN GOOD SAMARITAN LAW LIMITING LIABILITY

Respectfully report as follows: That HOUSE BILL No. 713

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 346

third reading copy (blue)
color

(Senator Hammond)

ADJUDICATION OF WATER RIGHTS IN MILE RIVER BASIN

Respectfully report as follows: That

HOUSE BILL

No. 346

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.